

1 MAUREEN E. MCCLAIN (State Bar No. 062050)
Email: mcclain@kmm.com
2 ALEX HERNAEZ (State Bar No. 201441)
Email: hernaez@kmm.com
3 KAUFF MCCLAIN & MCGUIRE LLP
One Post Street, Suite 2600
4 San Francisco, California 94104
Telephone: (415) 421-3111
5 Facsimile: (415) 421-0938

6 Attorneys for Defendant
ALTA BATES SUMMIT MEDICAL CENTER

7 TAZAMISHA H. IMARA (State Bar No. 201266)
8 Email: imara@kmm.com
KAUFF MCCLAIN & MCGUIRE LLP
9 2049 Century Park East
Suite 2690
10 Los Angeles, CA 90067
Telephone: (310) 277-7550
11 Facsimile: (310) 277-7525

12 Attorneys for Defendant
ALTA BATES SUMMIT MEDICAL CENTER

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

17 COYNESS L. ENNIX, JR., M.D.,
18 Plaintiff,
19 v.
20 ALTA BATES SUMMIT MEDICAL CENTER,
21 Defendant.

CASE NO. C 07-2486 WHA

**DEFENDANT'S MOTION IN LIMINE
NO. 7 TO EXCLUDE EVIDENCE
CONCERNING THE REPORT AND
ANTICIPATED TESTIMONY OF
MARGO LEAHY, M.D.**

DATE: May 19, 2008
TIME: 2:00 p.m.
DEPT: Ctrm. 9, 19th Floor
JUDGE: Hon. William H. Alsup

COMPLAINT FILED: May 9, 2007
TRIAL DATE: June 2, 2008

1 **I. INTRODUCTION**

2 Defendant Alta Bates Summit Medical Center ("ABSMC" or "the Hospital")
3 hereby applies for an order *in limine* directing that Plaintiff Coyness L. Ennix ("Plaintiff"),
4 his counsel, and witnesses be precluded from presenting evidence or argument in the
5 presence of the jury concerning the report and anticipated testimony of Margo Leahy,
6 M.D. ("Leahy"), in its entirety.

7 Plaintiff has designated Dr. Leahy as an expert "to testify regarding
8 whether Dr. Ennix obtained informed consent relating to the schizophrenic patient
9 defendant has identified as ABS-001." (Plaintiff's Expert Witness Disclosure attached as
10 Exhibit 1 to the Deposition of Margo Leahy, M.D. ("Leahy Depo")).¹ Dr. Leahy's
11 specialized area of practice includes psychiatry. (*Id.*) Here, Dr. Leahy opines as to
12 whether a single patient treated by Plaintiff "was capable of adequately understanding
13 what had been told to him by Dr. Ennix when he obtained informed consent for the
14 surgery." (*Id.*)

15 The motion is based upon the ground that Dr. Leahy's report and
16 anticipated testimony do not meet the minimum threshold for admissibility of expert
17 testimony. Careful scrutiny of the assumptions on which Dr. Leahy bases her opinions
18 reveal that they are nothing more than rank speculation, unsupported by the relevant
19 facts.

20 **II. ARGUMENT**

21 **A. Dr. Leahy's Report And Her Anticipated Testimony Are Unreliable**
22 **And Fail to Meet the Expert Opinion Standards Set Forth in Federal**
23 **Rule of Evidence 702 And Related Legal Doctrine.**

24 In deciding the admissibility of expert testimony, courts have a
25 "gatekeeping obligation" to ensure expert testimony is reliable. *Kumho Tire Co., Ltd. v.*
26 *Carmichael*, 526 US. 137, 141 (1999). Federal Rule of Evidence 702 requires that such

27 ¹ Attached as Exhibit A. Pursuant to the Court's Order Granting in Part and Denying in
28 Part Defendant's Request to File Under Seal filed on February 25, 2008, all patient-
identifying information has been redacted from the Leahy Depo and accompanying
exhibits.

1 testimony satisfy three separate relevance and reliability standards: (1) expert testimony
 2 must be based upon sufficient facts or data, (2) expert testimony must be the product of
 3 reliable principles and methods, and (3) the expert witness must have applied the
 4 principles and methods reliably to the facts of the case.

5 Here, it is the first prong that is most fundamentally at issue. As explained
 6 in the notes to Fed. R. Evid. 702, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 US.
 7 579, 593-95 (1993) set forth a non-exclusive checklist for trial courts to use in assessing
 8 the reliability of scientific expert testimony.² The specific factors explicated by the
 9 *Daubert* Court are:

10 (1) whether the experts technique or theory can be or has
 11 been tested—that is, whether the expert's theory can be
 12 challenged in some objective sense, or whether it is instead
 13 simply a subjective, conclusory approach that cannot
 14 reasonably be assessed for reliability; (2) whether the
 15 technique or theory has been subject to peer review and
 16 publication; (3) the known or potential rate of error of the
 17 technique theory when applied; (4) the existence and
 18 maintenance of standards and controls; and (5) whether the
 19 technique or theory has been generally accepted in the
 20 scientific community.

21 Fed. R. Evid. 702 2000 Advisory Committee Notes.

22 Additionally, courts have noted several other factors that may bear on the
 23 reliability and admissibility of expert testimony, including:

24 (1) Whether experts are "proposing to testify about matters
 25 growing naturally and directly out of research they have
 26 conducted independent of the litigation, or whether they have
 27 developed their opinions expressly for purposes of testifying,"
 28 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311,
 1317 (9th Cir. 1995).

(2) Whether the expert has unjustifiably extrapolated from an
 accepted premise to an unfounded conclusion. See *General
 Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (noting that in
 some cases a trial court "may conclude that there is simply
 too great an analytical gap between the data and the opinion
 proffered").

Fed. R. Evid. 702 2000 Advisory Committee Notes.

² The *Daubert* test applies not only to scientific expert witnesses, but to all potential
 testifying expert witnesses. *Kumho Tire Co., Ltd.*, 526 U.S. at 148-149.

1 Dr. Leahy's report and anticipated testimony at trial fall woefully short of
 2 those standards. Dr. Leahy's opinions are instead based upon insufficient facts and
 3 data that renders wholly unreliable and subjective conclusions. Dr. Leahy merely relates
 4 deficient hearsay information to form her "expert opinions." In fact, Dr. Leahy admits that
 5 she was not provided with information relevant to rendering an expert opinion. In
 6 concluding that the patient provided adequate informed consent, Dr. Leahy had no
 7 discussion and made no inquiries of Plaintiff, the patient or the patient's health care
 8 providers. (Leahy Depo., 16:5-17.) Had Dr. Leahy spoken to Plaintiff she would have
 9 learned that Plaintiff, not the patient, had drafted the letter dated February 18, 2005
 10 memorializing that informed consent had been provided by Plaintiff. (Deposition of
 11 Coyness L. Ennix, Jr., M.D., 276:15- 277:20, attached as Exhibit B; Leahy Depo, 25:6-
 12 19.) Dr. Leahy admits to the unreliable nature of her opinion given the fact that the
 13 patient had not written the February 18, 2005 letter. (Leahy Depo, 28:3-11.) Dr. Leahy
 14 concedes that the informed consent as to the second surgery performed by Plaintiff is
 15 "sketchy." (*Id.*, 31:21-32:14).

16 Nor is this the only area in which Dr. Leahy's opinions is uninformed and
 17 unreliable. Dr. Leahy deviated from her own methodology by failing to review the
 18 psychiatric history of the patient to determine whether informed consent had been
 19 provided. To highlight the subjectivity of her review, Dr. Leahy testified about a separate
 20 case concerning informed consent in which she was retained by the defendant. (Leahy
 21 Depo., 10:13-11:19.) In that case, she had "voluminous hospital records for many, many
 22 years," consisting entirely of psychiatric records. (*Id.*) Here, however, Dr. Leahy
 23 rendered the psychiatric records irrelevant because she depended the "general medical
 24 record" generated in part by Plaintiff. (*Id.*, 11:25-12:15.) She admits that she merely
 25 relied on the documents provided by Plaintiff for her review, which did not include any
 26 psychiatric or psychological records of the patient. (*Id.*, 9:22-10:6; 11:20-12:18.)

27 Dr. Leahy's opinions are defective in that she has scrutinized a limited
 28 amount of documentation and data, none of which included the patient's psychiatric

1 history or the circumstances surrounding the creation of the February 18, 2005 letter.

2 Therefore, her opinions are of little value and should be excluded.

3 **B. Dr. Leahy's Opinions And Her Anticipated Testimony Regarding The**
4 **Patient's Informed Consent Are Irrelevant.**

5 The Federal Rules of Evidence provide that relevant evidence is
6 admissible at trial. Relevant evidence is defined as:

7 [E]vidence having any tendency to make the
8 existence of any fact that is of consequence to the
9 determination of the action more probable or less
10 probable than it would be without the evidence.

11 Fed. R. Evid. 401; *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. at 587. The
12 Court's task as "gatekeeper" of proposed expert testimony is to determine whether or not
13 it is relevant; that is, whether it will assist the trier of fact to determine a fact in issue.
14 *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. at 152 (objective of *Daubert* is to ensure
15 reliability and relevancy of expert testimony). The testimony offered by Dr. Leahy fails to
16 meet this basic test of admissibility.

17 In this action, the proffered report and anticipated testimony is irrelevant to
18 the central issue in the case: whether ABSMC intentionally discriminated Plaintiff based
19 on his race. See 42 U.S.C. § 1981. It is anticipated that Dr. Leahy's report and
20 testimony will be offered as evidence as to the informed consent provided by a single
21 patient. Here, none of Dr. Leahy's opinions bear any relevance or connection with
22 issues to be decided in this case.

23 Under Federal Rule of Evidence 402, "[e]vidence which is not relevant is
24 not admissible."

25 **C. Dr. Leahy's Opinions And Her Anticipated Testimony Regarding The**
26 **Patient's Informed Consent Will Cause Unfair Prejudice.**

27 Because Dr. Leahy's testimony is unreliable and irrelevant, it would be
28 unduly prejudicial for a juror to hear Dr. Leahy's opinions as to the adequacy of the
patient's informed consent. Such evidence is inadmissible pursuant to Federal Rule of
Evidence 403. Rule 403 provides:

1 Although relevant, evidence may be excluded if its
 2 probative value is substantially outweighed by the
 3 danger of unfair prejudice, confusion of the issues, or
 4 misleading the jury, or by considerations of undue
 5 delay, waste of time, or needless presentation of
 6 cumulative evidence.

7 Given the clear lack of relevance and reliability, Dr. Leahy's report and
 8 anticipated testimony, if permitted at trial, has only the potential to be unfairly prejudicial
 9 to ABSMC. In addition, such evidence poses an unreasonable risk of misleading the jury
 10 with regard to the evidence provided in support of Dr. Leahy's opinion and the ultimate
 11 decision made by the Ad Hoc Committee. Dr. Leahy's opinions contribute nothing but
 12 intrude upon the area reserved for the jury. Here, Rule 403 justifies the preclusion of the
 13 requested evidence in this case.

14 **D. Dr. Leahy Should Be Precluded from Testifying to Statements Made**
 15 **Known to Her Through Medical Records.**

16 The wholly separate provisions of Federal Rule of Evidence 703 lead to a
 17 very similar result. Even if the Court were to find some kernel of an expert analysis
 18 contained in Dr. Leahy's factual recitation, Rule 703 clearly provides that an expert may
 19 not merely relate hearsay to the finder of fact. *Paddack v. Dave Christensen, Inc.*, 745
 20 F.2d 1254, 1262 (9th Cir. 1984); *U.S. v. Lundy*, 809 F.2d 392, 395 (7th Cir. 1987) (A
 21 court must insure that an expert witness is testifying as an expert and not merely a
 22 conduit through which hearsay is brought before the jury). This is supported by the 2000
 23 Advisory Committee Note to Federal Rule of Evidence 703, which stipulates that "Rule
 24 703 has been amended to emphasize that when an expert reasonably relies on
 25 inadmissible information to form an opinion or inference, the underlying information is not
 26 admissible simply because the opinion or inference is admitted."

27 Rule 703 compels the use of a balancing test to determine whether the
 28 evidence is admissible, providing in part that:

1 Facts or data that are otherwise inadmissible shall not be
2 disclosed to the jury by the proponent of the opinion or
3 inference unless the court determines that their probative
value in assisting the jury to evaluate the expert's opinion
substantially outweighs their prejudicial effect.

4 *Turner v. Burlington Northern Santa Fe R.R. Co.*, 338 F.3d 1058, 1061 (9th Cir. 2003).

5 This balancing test is weighted against the admission of such evidence. The 2000
6 Advisory Committee Note to Rule 703, states that "[t]he amendment provides a
7 presumption against disclosure to the jury of information used as the basis of an expert's
8 opinion and not admissible for any substantive purpose, when that information is offered
9 by the proponent of the expert." *Turner*, 338 F. 3d at 1062.

10 Numerous courts have applied these provisions to exclude expert
11 testimony. In *Paddack*, 745 F.2d at 1262, for example, the court found that audit reports
12 were hearsay and that the expert could not rely on such evidence to establish the truth
13 of what they assert. In *Turner*, 338 F. 3d 1062, the court found that because the
14 probative value that would result from the admission of a lab report relied upon by the
15 expert did not substantially outweigh its prejudicial effect, the expert was not allowed to
16 testify about the report.

17 In this case, as in those cited above, ABSMC believes Plaintiff will attempt
18 to use Dr. Leahy as a conduit for the hearsay contained in the "general record" and the
19 February 18, 2005 letter. Dr. Leahy's opinion is circular in its approach where it depends
20 on the logic that because physicians do not involve themselves with patients who are not
21 under control, one can presume that Plaintiff went forward with the procedure after
22 Plaintiff made the assessment that the patient was stable enough to tolerate the
23 procedure. (Leahy Depo, 15:23-16:4.) Dr. Leahy further opines that Plaintiff "discussed
24 the risks and benefits and alternatives, and all questions were answered." However, Dr.
25 Leahy's opinion that Plaintiff "describe[d] the procedures that were going to take place,
26 the reasons for it taking place, roughly how long it might take, what the risks are, [and]
27 what the recovery time might be" is based on nothing but her own presumption absent
28 any "factual substantiation." (*Id.*, 20:4-23.)

1 **III. CONCLUSION**

2 Because Dr. Leahy's testimony is devoid of any evidentiary value, the court
3 should grant ABSMC's motion. The Court should reject this attempt to usurp those
4 functions reserved for the jury.

5 DATED: April 29, 2008

Respectfully submitted,

KAUFF MCCLAIN & MCGUIRE LLP

8 By: 
9 ALEX HERNAEZ

10 Attorneys for Defendant
11 ALTA BATES SUMMIT MEDICAL
CENTER

12 4835-0557-1330.1

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REC'D MAR 11 2008

---oOo---

COYNESS L. ENNIX, JR., M.D.,

Plaintiff,

vs.

Case No. C 07-2486 WHA

ALTA BATES SUMMIT MEDICAL CENTER,

Defendant.

DEPOSITION OF MARGO M. LEAHY, M.D.

February 29, 2008

CONFIDENTIAL PROCEEDINGS

PURSUANT TO PROTECTIVE ORDER

REPORTED BY:

SANDRA L. CARRANZA, CRR, RPR, CSR 7062

PREFERRED REPORTERS
CERTIFIED SHORTHAND REPORTERS
19229 Sonoma Highway, Suite 112
Sonoma, California 95476
Phone (707) 938-9227

<p style="text-align: center;">2</p> <p style="text-align: center;">INDEX</p> <p>DEPOSITION OF MARGO M. LEAHY, M.D.</p> <p>EXAMINATION BY: PAGE MS. ELTANAL 5</p> <p>DEFENDANT'S EXHIBITS MARKED</p> <p>1 Plaintiff's Expert Witness Disclosure 6</p> <p>2 2/27/08 letter from Andrew Sweet to Mathew Vandall, enclosing documents Bates stamped L0001-L0657 and G0001-G1391 9</p> <p>3 2/18/05 letter from Jessie , to Medical Staff President, Summit Campus 25</p> <p style="text-align: center;">---oOo---</p> <p style="text-align: center;">REDACTED</p>	<p style="text-align: center;">4</p> <p>BE IT REMEMBERED that, pursuant to Notice of Taking Deposition and on Friday, February 29, 2008, commencing at the hour of 9:07 A.M., before me, SANDRA L. CARRANZA, CSR No. 7062, RPR, there personally appeared</p> <p style="text-align: center;">MARGO M. LEAHY, M.D.,</p> <p>called as a witness by the Defendant, who, having been first duly sworn, was examined and testified as hereinafter set forth.</p> <p style="text-align: center;">---oOo---</p>
<p style="text-align: center;">3</p> <p style="text-align: center;">APPEARANCES</p> <p>FOR THE PLAINTIFF:</p> <p>MOSCONE, EMBLIDGE & QUADRA BY: ANDREW E. SWEET, ATTORNEY AT LAW 220 Montgomer Street, Suite 2100 San Francisco, California 94104 (415) 362-3599 sweet@meqlaw.com</p> <p>FOR THE DEFENDANT:</p> <p>KAUFF, MCCLAIN & MCGUIRE BY: ROSSANA S. ELTANAL, ATTORNEY AT LAW One Post Street, Suite 2600 San Francisco, California 94104 (415) 421-3111 eltanal@kmm.com</p> <p>TAKEN AT: KAUFF, MCCLAIN & MCGUIRE One Post Street, Suite 2600 San Francisco, California 94104</p> <p style="text-align: center;">---oOo---</p>	<p style="text-align: center;">5</p> <p>MARGO M. LEAHY, M.D., having been duly sworn, testified as follows:</p> <p>EXAMINATION BY MS. ELTANAL</p> <p>MS. ELTANAL: My name is Rossana Eltanal. I'm representing the defendant in this matter. I have a few preliminary statements.</p> <p>I would appreciate it if the court reporter can designate the record confidential and all exhibits confidential as well under the protective order that we have in place in this action.</p> <p>Q. Will you state your full name, please?</p> <p>A. Margo Leahy.</p> <p>Q. Have you ever been retained to provide expert testimony for Alta Bates Summit Medical Center?</p> <p>A. Not that I recall.</p> <p>Q. And you have been retained in this action to provide expert testimony; is that correct?</p> <p>A. That's correct.</p> <p>Q. You were retained by plaintiff's attorney?</p> <p>A. That's correct.</p> <p>Q. What was the date of your retention?</p> <p>A. I have to check that.</p> <p>It was sometime in the beginning of 2008, before January 16th, so the very beginning of January,</p>

<p style="text-align: right;">6</p> <p>1 I'd say.</p> <p>2 Q. And what is the fee that you're charging for</p> <p>3 your services in this matter?</p> <p>4 A. The fee is \$400 an hour for record review,</p> <p>5 examinations; 450 an hour for depositions, and a</p> <p>6 different fee for trial testimony.</p> <p>7 Q. How many hours have you spent on this matter so</p> <p>8 far?</p> <p>9 A. About eight hours.</p> <p>10 MS. ELTANAL: I will mark --</p> <p>11 MR. SWEET: We have taken so many depositions</p> <p>12 in this case, the numbering is completely off. We're</p> <p>13 supposed to be sequential, but I didn't say anything</p> <p>14 yesterday and it's not a big deal to me today because we</p> <p>15 are going to go back and look at everything and put them</p> <p>16 in sequential order for the court, so mark it whatever</p> <p>17 you want.</p> <p>18 (Whereupon, Defendant's Exhibit 1 was marked</p> <p>19 for identification.)</p> <p>20 MS. ELTANAL: Q. Have you ever been deposed</p> <p>21 before?</p> <p>22 A. Yes, I have.</p> <p>23 Q. How many times?</p> <p>24 A. About a hundred plus times.</p> <p>25 Q. And you understand that your testimony is under</p>	<p style="text-align: right;">8</p> <p>1 references, I believe, your report and CV; is that</p> <p>2 correct?</p> <p>3 A. Uhm-hum.</p> <p>4 Q. Have you provided any other drafts or versions</p> <p>5 to plaintiff's counsel of this report?</p> <p>6 A. No, I have not.</p> <p>7 Q. Is this an accurate copy of your CV?</p> <p>8 A. Yes, it appears to be.</p> <p>9 Q. Are you aware of inaccuracies or would you like</p> <p>10 to make any modifications to your CV at this time?</p> <p>11 A. No.</p> <p>12 Q. Do you have any different versions of your CV?</p> <p>13 A. No. I have ones from years ago, but my current</p> <p>14 CV is as is.</p> <p>15 Q. Do you specialize in any special areas of</p> <p>16 practice?</p> <p>17 A. I'm board eligible in child and adolescent</p> <p>18 psychiatry, and I'm a certified union psychoanalyst, and</p> <p>19 I do forensic psychiatric, although I'm not certified in</p> <p>20 that area.</p> <p>21 MS. ELTANAL: We were provided with some</p> <p>22 records in response to a subpoena. Instead of marking</p> <p>23 the entire stack of documents into the record, can you</p> <p>24 mark this one?</p> <p>25 We are going to reference the documents by</p>
<p style="text-align: right;">7</p> <p>1 oath?</p> <p>2 A. Yes, I do.</p> <p>3 Q. And have you provided services for plaintiff's</p> <p>4 counsel in the past?</p> <p>5 A. Yes, I have.</p> <p>6 Q. How many times?</p> <p>7 A. I want to say two times, one or two times. I</p> <p>8 can't recall. I think two times.</p> <p>9 Q. And can you explain the context of those cases?</p> <p>10 A. The one case I remember which was about four</p> <p>11 years ago was a plaintiff's case involving a woman</p> <p>12 making claims against a psychiatrist for sexual</p> <p>13 harassment, sexual abuse. I don't remember all the</p> <p>14 specifics of it.</p> <p>15 Q. And the other case?</p> <p>16 A. I can't remember. There was another case, and</p> <p>17 I just -- it's skipping my mind. It may have been a</p> <p>18 defense case. I can't remember what it was. Longer</p> <p>19 than four years.</p> <p>20 Q. Have you had any prior relationship with the</p> <p>21 plaintiff, Dr. Ennix?</p> <p>22 A. No, I have not.</p> <p>23 Q. So we marked Exhibit 1 as Plaintiff's Expert</p> <p>24 Witness Disclosure.</p> <p>25 And Exhibit B to this document is --</p>	<p style="text-align: right;">9</p> <p>1 their Bates labels and just confirm that this is your</p> <p>2 entire file of records in this matter.</p> <p>3 (Whereupon, Defendant's Exhibit 2 was marked</p> <p>4 for identification.)</p> <p>5 MS. ELTANAL: So that's a letter from</p> <p>6 plaintiff's counsel indicating that your subpoena</p> <p>7 documents are Bates numbered L0001 to L0657.</p> <p>8 MR. SWEET: Are you just asking her to look</p> <p>9 through them generally, not every single document?</p> <p>10 MS. ELTANAL: Just generally, just to show that</p> <p>11 it starts at L0001 and ends at L0657.</p> <p>12 THE WITNESS: The numbers correspond to the</p> <p>13 ones you mentioned. I can't really go through this pile</p> <p>14 of documents.</p> <p>15 MS. ELTANAL: Q. Have you provided all the</p> <p>16 documents in your file to plaintiff's counsel for</p> <p>17 production?</p> <p>18 A. Yes, I have.</p> <p>19 Q. Are there any documents that you've relied on</p> <p>20 that you have not given to plaintiff's counsel?</p> <p>21 A. No.</p> <p>22 Q. When you were retained by plaintiff's counsel,</p> <p>23 did you request any specific categories of documents, or</p> <p>24 did plaintiff's counsel provide you with the documents?</p> <p>25 MR. SWEET: Objection. Compound.</p>

<p style="text-align: right;">10</p> <p>1 <u>THE WITNESS: Normally, I do request specific</u></p> <p>2 <u>documents because I have a normal way to do evaluations</u></p> <p>3 <u>involves seeing the plaintiff. This was not that kind</u></p> <p>4 <u>of examination; it was a record review. So I relied on</u></p> <p>5 <u>the law firm to send me the records that they wanted</u></p> <p>6 <u>reviewed.</u></p> <p>7 <u>MS. ELTANAL: Q. Did you have to ask for</u></p> <p>8 <u>additional documents after you received the files from</u></p> <p>9 <u>plaintiff's counsel?</u></p> <p>10 <u>A. I don't remember. I don't remember whether</u></p> <p>11 <u>there was anything I wanted in addition that I received</u></p> <p>12 <u>or things were sent to me.</u></p> <p>13 <u>Q. In your experience as an expert or consultant,</u></p> <p>14 <u>how many times have you conducted a record review?</u></p> <p>15 <u>A. I don't remember. Probably a few dozen times</u></p> <p>16 <u>over the years.</u></p> <p>17 <u>Q. Did any of those situations involve the issue</u></p> <p>18 <u>of informed consent?</u></p> <p>19 <u>A. Yes.</u></p> <p>20 <u>Q. In what context was that?</u></p> <p>21 <u>A. They were in different contexts. The one I</u></p> <p>22 <u>remember most, probably the most recent one was a</u></p> <p>23 <u>contract dispute of a 1970s rock-and-roll person, you</u></p> <p>24 <u>know, star, who also had a chronic mental illness, and</u></p> <p>25 <u>the question was whether or not he had been capable of</u></p>	<p style="text-align: right;">12</p> <p>1 <u>relevant to your conclusions and opinions in this case?</u></p> <p>2 <u>A. No.</u></p> <p>3 <u>Q. Why is that?</u></p> <p>4 <u>A. I didn't think they were necessary. The person</u></p> <p>5 <u>was presented as someone with a long history of</u></p> <p>6 <u>schizophrenia but with a record of stability for some</u></p> <p>7 <u>time, as reflected in his general medical record.</u></p> <p>8 <u>Q. By "general medical record," what do you mean</u></p> <p>9 <u>by that? What are you referring to?</u></p> <p>10 <u>A. The records that I was given that were those of</u></p> <p>11 <u>his cardiologist that indicated he was well enough to be</u></p> <p>12 <u>considered for a surgery for cardiac catheterization and</u></p> <p>13 <u>seen in the office and no mention was ever made of any</u></p> <p>14 <u>sort of psychological instant or decompensation during</u></p> <p>15 <u>that time.</u></p> <p>16 <u>Q. Had you seen any record from the patient's</u></p> <p>17 <u>psychiatrist or psychologist?</u></p> <p>18 <u>A. No, I have not.</u></p> <p>19 <u>Q. Is it your opinion that a cardiologist is</u></p> <p>20 <u>capable of determining whether an individual is mentally</u></p> <p>21 <u>capable or well enough?</u></p> <p>22 <u>MR. SWEET: Objection. Incomplete</u></p> <p>23 <u>hypothetical.</u></p> <p>24 <u>THE WITNESS: Well enough to what?</u></p> <p>25 <u>MS. ELTANAL: Q. In any capacity, just to</u></p>
<p style="text-align: right;">11</p> <p>1 <u>making an informed choice in this contract, if he</u></p> <p>2 <u>understood what he was signing at the time because of</u></p> <p>3 <u>having schizophrenia.</u></p> <p>4 <u>Q. Who were you retained by in that action?</u></p> <p>5 <u>A. I believe I was retained by the defense side.</u></p> <p>6 <u>Yes, I was retained by the defense side.</u></p> <p>7 <u>Q. And the claim was brought by the 1970s</u></p> <p>8 <u>individual?</u></p> <p>9 <u>A. Yes, yes.</u></p> <p>10 <u>Q. And can you provide a short summary of your</u></p> <p>11 <u>conclusion in that action? Were you able to determine</u></p> <p>12 <u>that the individual provided informed consent?</u></p> <p>13 <u>A. In that case, yes, I had voluminous hospital</u></p> <p>14 <u>records for many, many years, and I was able to</u></p> <p>15 <u>determine that the person would have been able to</u></p> <p>16 <u>understand the contract accurately to have signed it.</u></p> <p>17 <u>Q. And the hospital records, did that include the</u></p> <p>18 <u>individual's psychiatric or psychological records?</u></p> <p>19 <u>A. Yes, it was all psychiatric records.</u></p> <p>20 <u>Q. In this matter, were you provided psychiatric</u></p> <p>21 <u>records for the patient in question?</u></p> <p>22 <u>A. No, I was not.</u></p> <p>23 <u>Q. Did you request those records?</u></p> <p>24 <u>A. No, I did not.</u></p> <p>25 <u>Q. Did you feel that the records would have been</u></p>	<p style="text-align: right;">13</p> <p>1 <u>determine the level of one's mental capacity, is that</u></p> <p>2 <u>within the realm of expertise and knowledge of a</u></p> <p>3 <u>cardiologist?</u></p> <p>4 <u>MR. SWEET: Same objection.</u></p> <p>5 <u>THE WITNESS: That's too vague a question. I</u></p> <p>6 <u>don't mean to be difficult, but mental capacity in what</u></p> <p>7 <u>regard.</u></p> <p>8 <u>MS. ELTANAL: Q. Would you feel comfortable</u></p> <p>9 <u>providing an opinion as to the -- as to -- as to</u></p> <p>10 <u>diagnosing an individual with a heart problem?</u></p> <p>11 <u>MR. SWEET: Objection. Vague. Incomplete</u></p> <p>12 <u>hypothetical.</u></p> <p>13 <u>THE WITNESS: Again, I'm not a cardiologist. I</u></p> <p>14 <u>wouldn't be asked to do that.</u></p> <p>15 <u>MS. ELTANAL: Q. That's somewhat of my point</u></p> <p>16 <u>is that Dr. Ennix is not a psychologist or a</u></p> <p>17 <u>psychiatrist, and you are relying on his opinion</u></p> <p>18 <u>concerning the mental health of a patient. That wasn't</u></p> <p>19 <u>a question so ...</u></p> <p>20 <u>Is it your opinion that Dr. Ennix had the</u></p> <p>21 <u>training and experience to render an opinion as to the</u></p> <p>22 <u>mental health of this patient?</u></p> <p>23 <u>MR. SWEET: Objection. Assumes facts not in</u></p> <p>24 <u>evidence. It's vague. Compound; incomplete</u></p> <p>25 <u>hypothetical.</u></p>

REDACTED 14

1 THE WITNESS: I'm not sure if I can answer
2 that, really. I never thought of Dr. Ennix or
3 Dr. Ferguson making a diagnosis of this patient, nor did
4 I think it was indicated.
5 MS. ELTANAL: Q. In the cases that you have
6 rendered an opinion on informed consent, did any of
7 those cases involve an individual's capacity to
8 understand the legal proceedings?
9 MR. SWEET: Objection. Vague as to legal
10 proceedings.
11 A. I don't remember, honestly. I don't remember.
12 MS. ELTANAL: Q. Can you tell me the scope of
13 your opinions that you were asked to render in this
14 case?
15 A. I was asked to determine whether or not it
16 appeared that the plaintiff -- not the plaintiff, the
17 patient, Mr. --
18 May I say his name in the context of this?
19 MR. SWEET: You can, since it's been marked
20 confidential.
21 THE WITNESS: Okay.
22 was capable of understanding the
23 fact that he was going to be having cardiac surgery and
24 some idea of what the cardiac surgery entailed, and give
25 his agreement, his consent to the procedure.

REDACTED 15

1 MS. ELTANAL: Q. And you have rendered
2 opinions and conclusions?
3 A. Yes, I have.
4 Q. Can you list for me those opinions and
5 conclusions?
6 A. In my opinion, was able to
7 understand and give consent to the cardiac surgery. And
8 I say that based on several different things, but I
9 would say, in general, he was able to give consent to
10 that procedure.
11 Q. And what are your reasons for that conclusion?
12 A. Well, with psychiatric patients, one often
13 looks at the course of things, and although
14 cardiologists are not asked to make diagnoses
15 psychiatrically, as psychiatrists are not asked to make
16 diagnoses in cardiology, we all know how to assess when
17 one is distressed or disturbed by their clinical
18 presentation. And in this case, the clinical
19 presentation on multiple occasions to the cardiologist,
20 you know, was one of being well enough to undergo
21 procedures, examinations, and ultimately the plan for
22 surgery.
23 Historically, nonpsychiatrist MDs tend not to
24 want to be involved with psychiatric patients who are
25 not under control, so one presumes when they are willing

16

1 to go forward that they've made the assessment that the
2 person is stable enough to tolerate the procedure. And
3 I think that was true in this case, beginning with the
4 cardiac catheterization several months before.
5 Q. How many discussions have you had with
6 Dr. Ennix?
7 A. I've never had any discussions with Dr. Ennix.
8 Q. Why is that?
9 A. I don't need to talk to Dr. Ennix, basically.
10 Q. And you did not request to speak with him?
11 A. No, I did not.
12 Q. Have you ever met the patient -- the patient in
13 question?
14 A. No, I have not.
15 Q. Did you ever talk to any health or any of the
16 caregivers of the patient?
17 A. No, I did not.
18 Q. And do you agree that an important element of
19 understanding someone's state of mind is having a
20 discussion with that person?
21 MR. SWEET: Objection. Vague.
22 THE WITNESS: I'm not quite sure what you're
23 asking. It's a little vague for me, what you're saying.
24 Maybe you can rephrase it somehow.
25 MS. ELTANAL: Q. When rendering whether an

17

1 opinion as to an individual's state of mind, do you
2 think it's helpful to speak with that person?
3 A. Again, it's an odd question for me. I think
4 that if I'm asked to give an opinion about someone's
5 mental, psychological condition at a point in the past,
6 unless I were able to have been there at that point in
7 the past, to have talked with them, it wouldn't be
8 relevant to have met with them, you know, at this point.
9 Q. How confident are you concerning the opinion
10 that you've rendered in this action?
11 MR. SWEET: Objection.
12 THE WITNESS: How confident in what regard?
13 MS. ELTANAL: Q. In the regard that you've
14 never met the patient, the informed -- the procedure
15 took place over four years ago, and you're relying on
16 medical records from cardiologists.
17 A. Yes.
18 Q. How confident are you in your opinion?
19 MR. SWEET: Objection. Vague.
20 THE WITNESS: Sorry.
21 MR. SWEET: Objection. Vague.
22 You can answer the question.
23 THE WITNESS: I'm confident. I'm fully
24 confident to the extent that one can be confident in
25 anything. I mean, I wasn't there. The record is very

<p style="text-align: right;">18</p> <p>1 clear to me, though, that this was not -- I mean, I've</p> <p>2 known and seen many, many schizophrenics, and I've seen</p> <p>3 many, many records of schizophrenics, and this man</p> <p>4 appears to have been very well compensated and in</p> <p>5 remission, both at the times he was seen by the</p> <p>6 cardiologist, the time he had his cardiac</p> <p>7 catheterization, and most importantly, the times that he</p> <p>8 underwent cardiac surgery. He was on a very good</p> <p>9 regimen of medication.</p> <p>10 He was brought in by a caregiver who knew him</p> <p>11 well. Caregivers would not bring someone acutely</p> <p>12 psychotic or agitated to a doctor's appointment. It's</p> <p>13 too disruptive. Usually, as I said a moment before, MDs</p> <p>14 who are not psychiatrists don't want those patients in</p> <p>15 their office because they're out of control or</p> <p>16 decompensated. So I'm presuming that the caregiver who</p> <p>17 knew this patient felt that he was adequately controlled</p> <p>18 to go to his doctor appointment. That says a lot.</p> <p>19 Furthermore, I think that the cardiologist who</p> <p>20 had been seeing this patient for several years, I think</p> <p>21 since 2001, had some sense of what he was like and felt</p> <p>22 that he had some kind of a relationship with him, enough</p> <p>23 to be able to tell if he was functioning or not</p> <p>24 functioning. It's not that subtle to tell when a</p> <p>25 schizophrenic decompensates.</p>	<p style="text-align: right;">20</p> <p>1 MS. ELTANAL: The type of person.</p> <p>2 THE WITNESS: I don't know exactly what their</p> <p>3 credentials were; that's correct.</p> <p>4 MS. ELTANAL: Q. If we look at page two of</p> <p>5 your report, if we look to the end of the first full</p> <p>6 paragraph, it says here that Dr. Ennix was present and</p> <p>7 discussed the risks and benefits and alternatives, and</p> <p>8 all questions were answered. The patient agrees to</p> <p>9 proceed.</p> <p>10 Do you have any idea the substance and nature</p> <p>11 of Dr. Ennix's conversation with the patient?</p> <p>12 A. Well, I have some idea. I don't have any</p> <p>13 specific factual substantiation to that idea, but in</p> <p>14 general, when someone gives informed consent to a</p> <p>15 patient, they describe the procedure that's going to</p> <p>16 take place, the reasons for it taking place, roughly how</p> <p>17 long it might take, what the risks are, what the</p> <p>18 recovery time might be, that sort of thing. So I'm</p> <p>19 presuming that would be what he spoke of.</p> <p>20 Q. And you're presuming that because there's</p> <p>21 nothing in the record that actually spells out what</p> <p>22 Dr. Ennix discussed with the patient; is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. So when we refer to things like discussing the</p> <p>25 risks and benefits and alternatives, there's really no</p>
<p style="text-align: center;">REDACTED</p> <p style="text-align: right;">19</p> <p>1 MS. ELTANAL: Q. When you refer to caregiver,</p> <p>2 can you explain to me what you mean by that term?</p> <p>3 A. I'm only, I think, quoting what was in the</p> <p>4 record. The person that accompanied one</p> <p>5 of his appointments. I have to check the specific one,</p> <p>6 when he was given the description of the procedure.</p> <p>7 Maybe his admission workup. I have to look at that more</p> <p>8 directly, but ...</p> <p>9 Q. Do you have any idea whether the caregiver was</p> <p>10 simply a driver, whether the caregiver was a doctor or a</p> <p>11 nurse?</p> <p>12 A. I don't know any of those things. My</p> <p>13 experience with board-and-care facilities, which is</p> <p>14 where) was residing, is that they usually send</p> <p>15 one of the staff with their residents for a doctor's</p> <p>16 appointment.</p> <p>17 Q. Staff meaning a doctor or a nurse?</p> <p>18 A. No. The staff is not usually doctors or</p> <p>19 nurses. It's usually psychiatric technicians, and the</p> <p>20 board-and-care facilities are overseen by doctors or</p> <p>21 nurses.</p> <p>22 Q. But in this instance, you can't be certain as</p> <p>23 to the identity of that individual?</p> <p>24 MR. SWEET: Objection. Vague as to what you</p> <p>25 mean by identity. The name or the type of person?</p>	<p style="text-align: right;">21</p> <p>1 idea to understand what was discussed, what the risks</p> <p>2 were, what the benefits were, what those alternatives</p> <p>3 were?</p> <p>4 MR. SWEET: Objection. That misstates the</p> <p>5 testimony and the evidence in the case.</p> <p>6 THE WITNESS: I think -- are you asking me</p> <p>7 because it's not spelled out in the note that I don't</p> <p>8 know what they are?</p> <p>9 MS. ELTANAL: Q. Yes.</p> <p>10 A. Well, I don't recall ever seeing them all</p> <p>11 spelled out in an informed consent note. Usually, the</p> <p>12 doctor will say that the procedure to be undertaken was</p> <p>13 discussed, risks and benefits were outlined, questions</p> <p>14 were answered, something vague of that nature. So to my</p> <p>15 mind, reading the record, it was pretty standard.</p> <p>16 Now you're correct, I was not there. I don't</p> <p>17 know exactly, but one presumes that when one writes that</p> <p>18 in the record, that that's what it's been conveyed.</p> <p>19 Q. And for the record of the second surgery on the</p> <p>20 31st, can you point to any place where that was</p> <p>21 conveyed --</p> <p>22 MR. SWEET: Objection. Vague as to that place.</p> <p>23 MS. ELTANAL: I wasn't finished.</p> <p>24 MR. SWEET: Sorry.</p> <p>25 MS. ELTANAL: Q. -- that being the risks,</p>

22

1 benefits, alternatives, and a place where it mentions
2 that all questions were answered?
3 A. I believe -- and this is not uncommon in those
4 more emergency cases -- that all that was indicated was
5 that the patient was informed of the need for the second
6 surgery. I'd have to go back and look over that. I'm
7 happy to do that if you like.
8 Q. But you agree that there is no notation of any
9 discussion with the patient prior to the second surgery
10 concerning the risks, benefits, and alternatives?
11 A. Again, as I recollect sitting here now, that
12 there was nothing specifically noted, simply that the
13 need for the second surgery was expressed to the
14 patient.
15 Q. And you mentioned something about in an
16 emergency situation. Is there anything in the record or
17 in your report that indicates that the second surgery
18 was an emergency surgery?
19 A. Well, normally, when there's a -- there's the
20 first surgery that doesn't go well, something has to
21 happen pretty quickly. Although it's not spelled out as
22 an emergency, it does seem to be somewhat of an urgent
23 procedure. It's done within a few days of the first
24 procedure, correcting a defect in the first procedure.
25 Q. But you're making that assumption in this case?

23

1 A. I am, yes. It was not an elective procedure.
2 Q. You also reference on page three of your report
3 towards the end the additional fact of his having been
4 accompanied by a caregiver who knew his limitation
5 supports the opinion that the patient was capable of
6 understanding what was being told.
7 MR. SWEET: Do you see where she is, doctor?
8 THE WITNESS: Yes.
9 MS. ELTANAL: Q. Yes.
10 Did you -- was there any other documentation in
11 the record or any conversation that you had with an
12 individual to discuss the presentation of the caregiver
13 with the patient prior to the surgery?
14 A. I'm not sure.
15 MR. SWEET: Objection. Vague.
16 THE WITNESS: I'm not sure I understand your
17 question. I'm sorry.
18 MS. ELTANAL: Q. You're making an opinion here
19 about the caregiver that supports the opinion that the
20 patient was capable of understanding what was being
21 told, correct?
22 A. That's correct.
23 Q. Is there any -- what is that opinion based on?
24 A. That opinion is largely based on my own many,
25 many years of experience with the community of

24

1 board-and-care homes, chronic schizophrenics, and
2 knowing how they function, that they -- they have a very
3 serious chronic mental illness, but they also have to go
4 about life. They have to be taken to doctor's
5 appointments and medical appointments of one sort or
6 another. And the general rule is if they're
7 decompensated, if they're unstable, even in some
8 board-and-care facilities if they're having a
9 particularly bad day, they're not taken to the
10 appointment. So that's just my clinical experience,
11 that the presumption would be, the caregiver has brought
12 him, that he, you know, is in good enough shape to come
13 and participate fully in his appointment, undergo
14 whatever the treatments are, and not be destabilized.
15 Q. And you have -- in this situation, you have no
16 factual knowledge, though, that the caregiver knew the
17 patient and his needs and limitations?
18 A. I have no factual knowledge. In other words,
19 no written documents. This would be kind of implicit.
20 Q. You also referenced confirmation that can be
21 found in the February 18th, 2005, letter, from the
22 patient to the medical staff president in rendering your
23 opinion; is that correct?
24 A. That's correct.
25 MS. ELTANAL: I will have that marked.

REDACTED

25

1 (Whereupon, Defendant's Exhibit 3 was marked
2 for identification.)
3 MS. ELTANAL: Q. Is this the letter that you
4 were referring to?
5 A. Yes, it is.
6 Q. Are you aware of the circumstances surrounding
7 how, when, and where this letter was prepared?
8 A. I can deduce from the date that it was prepared
9 sometime in January or February of 2005, but other than
10 that, I don't know anything else about the
11 circumstances.
12 Q. Do you have any idea who created the document?
13 A. I'm presuming it was created by with
14 help by someone.
15 Q. You are not aware that Dr. Ennix created this
16 document?
17 MR. SWEET: Objection. Assumes facts not in
18 evidence.
19 THE WITNESS: I don't know anything about that.
20 MS. ELTANAL: Q. Are you aware that there are
21 five other documents dated February 18th, 2005, from
22 former patients of Dr. Ennix concerning their consent to
23 procedures?
24 A. No, I'm not.
25 Q. Do you have any concerns about a doctor going

<p style="text-align: right;">26</p> <p>1 to a patient one year later after surgery is performed</p> <p>2 and asking the patient to validate the doctor's prior</p> <p>3 actions?</p> <p>4 MR. SWEET: Objection. Vague.</p> <p>5 THE WITNESS: Do I have any concerns in what</p> <p>6 regard?</p> <p>7 MS. ELTANAL: Q. Is this, in your opinion,</p> <p>8 ethical conduct?</p> <p>9 A. Certainly, I don't see anything unethical about</p> <p>10 asking a patient to document something that's happened,</p> <p>11 if it's actually happened.</p> <p>12 Q. Have you ever in your experience as a physician</p> <p>13 obtained informed consent a year after the event</p> <p>14 occurred?</p> <p>15 MR. SWEET: Objection. It's vague and</p> <p>16 misleading.</p> <p>17 THE WITNESS: I don't -- no, I never have. I</p> <p>18 don't know that I have ever needed to.</p> <p>19 MS. ELTANAL: Q. Why is that?</p> <p>20 A. I don't have a hospital practice. My consent</p> <p>21 for treatment with parents about children is verbal,</p> <p>22 with adults it's verbal. They take the treatment. It's</p> <p>23 never been disputed. I guess that's the main thing.</p> <p>24 It's never been disputed. I could imagine, sitting here</p> <p>25 thinking about it, since it's not written, if it were</p>	<p style="text-align: right;">28</p> <p>1 illness is auditory hallucination, delusions, paranoid</p> <p>2 ideation, that sort of thing.</p> <p>3 <u>MS. ELTANAL: Q. In reviewing the February 18,</u></p> <p>4 <u>2005, letter from the patient, is there any way to</u></p> <p>5 <u>ascertain the individual's mental capacity at that time?</u></p> <p>6 <u>A. If one presumes that the patient wrote the</u></p> <p>7 <u>letter, that would be supportive of a very functional</u></p> <p>8 <u>mental capacity.</u></p> <p>9 <u>If the patient did not write the letter and</u></p> <p>10 <u>simply signed it, it's basically impossible to make an</u></p> <p>11 <u>assessment of what the mental condition was.</u></p> <p>12 Q. Did you come across anything in the documents</p> <p>13 that you reviewed illustrating that Dr. Ennix conceded</p> <p>14 that psychiatric evaluation would have been a good idea</p> <p>15 prior to performing the surgery?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Would it change your opinions or conclusions at</p> <p>18 all if you had seen a notation concerning Dr. Ennix's</p> <p>19 concession that a psychiatric evaluation would have been</p> <p>20 a good idea?</p> <p>21 MR. SWEET: Objection. Incomplete hypothetical</p> <p>22 regarding the timing of when he said that, in the</p> <p>23 context of an investigation.</p> <p>24 THE WITNESS: No, I don't think it would.</p> <p>25 MS. ELTANAL: Q. In your opinion, is it</p>
<p style="text-align: right;">27</p> <p>1 being disputed, it's something I might have to do.</p> <p>2 Q. Do you think it's important to have a written</p> <p>3 document contemporaneously reflecting informed consent?</p> <p>4 MR. SWEET: Objection. Vague as to what</p> <p>5 important means.</p> <p>6 THE WITNESS: I think that, you know, any note</p> <p>7 that indicates that the patient and the doctor have come</p> <p>8 to some agreement about the treatment is important. I</p> <p>9 think the detail varies, depending on the circumstance.</p> <p>10 MS. ELTANAL: Q. And are you aware of any note</p> <p>11 by Dr. Ennix concerning the second surgery that some</p> <p>12 agreement was reached between he and the patient?</p> <p>13 A. No, I'm not. I'm only aware of the note by</p> <p>14 Dr. Ferguson which references the procedure.</p> <p>15 Q. Can you explain to me what the symptoms of</p> <p>16 schizophrenia are?</p> <p>17 MR. SWEET: Objection. Vague.</p> <p>18 THE WITNESS: Well, you know, the symptoms are</p> <p>19 lengthy and you can find them in detail in the DSM4, the</p> <p>20 Diagnostic and Statistical Manual, but in general, the</p> <p>21 major characterization is a patient who has either at</p> <p>22 the moment or over time inability to distinguish reality</p> <p>23 from fantasy for some sustained amount of time and has</p> <p>24 had this experience on more than one occasion. And some</p> <p>25 of the accompanying symptoms that characterize the</p>	<p style="text-align: right;">29</p> <p>1 standard course or are you familiar with patients</p> <p>2 undergoing psychiatric evaluations prior to certain</p> <p>3 surgeries?</p> <p>4 A. With psychiatric patients, we tend not to</p> <p>5 routinely ask for psychiatric consultation prior to</p> <p>6 surgeries. The reason one would indicate is when there</p> <p>7 is presence of symptomatology, that is if the</p> <p>8 examining -- if the examination and in the interview the</p> <p>9 person seems out of touch, they seem not to understand</p> <p>10 what you're talking about, they seem agitated,</p> <p>11 uncooperative, that sort of thing, then one would order</p> <p>12 a psychiatric consultation, whether schizophrenic or</p> <p>13 elderly or something like that. But in the absence of</p> <p>14 any positive clinical findings that are observable to</p> <p>15 any physician one wouldn't routinely order a psychiatric</p> <p>16 consultation.</p> <p>17 Q. You mentioned something in your report that</p> <p>18 referenced the patient at one point became agitated and</p> <p>19 I believe you referenced something about his medication</p> <p>20 not being sufficient?</p> <p>21 A. That's correct.</p> <p>22 Q. What is the reason for that opinion? Do you</p> <p>23 have any factual knowledge?</p> <p>24 A. There was some notation in the postoperative</p> <p>25 record after the second surgery, I believe -- I'd have</p>

30

1 to go back and check -- that the patient was agitated,
2 and it's very common postoperatively for some people to
3 be agitated in general, but when you have a psychiatric
4 patient, chronic psychiatric patient, their medication
5 levels are very important to maintain. This is usually
6 counter-balanced, I think, in the surgeon's mind by the
7 risk of surgery, in terms of -- not risk of surgery, the
8 risk of anesthesia. Either the anesthesiologist or the
9 surgeon will sometimes have them on a lower dose until
10 postoperatively. I have no idea what their thinking was
11 in this case, but it's not an uncommon thing. And then
12 as they become agitated, that's frequently when a
13 psychiatric consult was gotten, as it was in this case,
14 and medication was restored to its previous levels and
15 the patient's equilibrium was restored.
16 Q. Do you have any understanding of the type of
17 surgery involved in this case?
18 A. Again, I'm not a cardiac surgeon. I was able
19 to read the medical records enough to understand some of
20 what they've done, but certainly I couldn't opine about
21 the surgery itself.
22 Q. Were you aware that it was -- involved new
23 equipment or new procedures at the hospital?
24 MR. SWEET: Objection. Vague. Incomplete
25 hypothetical.

31

1 THE WITNESS: Again, I really would be
2 reluctant to comment on anything about the surgical --
3 specific surgical procedure.
4 MS. ELTANAL: Q. And you have not been asked
5 to render an opinion as to the standard of care
6 concerning the surgery in this case?
7 A. No, I have not.
8 MS. ELTANAL: Can we take a break?
9 (Recess taken.)
10 MS. ELTANAL: Q. I just want to make sure that
11 we've covered all the opinions or conclusions that
12 you've rendered in this action. We've covered a lot of
13 ground so far.
14 Is there any other opinions or conclusions that
15 you can recall at this time that we have not covered?
16 MR. SWEET: Objection. Vague and compound.
17 THE WITNESS: Although it's not read into the
18 record, I certainly would consider all of my clinical
19 impression to be my opinion, although we haven't
20 discussed all of it this morning.
21 MS. ELTANAL: Q. If the February 18th, 2005,
22 letter did not exist, would you agree that the evidence
23 of informed consent is lacking?
24 A. I wouldn't agree that it's lacking. I would
25 say that certainly it's present for the first surgery

32

1 and it's sketchy for the second surgery. It's certainly
2 documented by the cardiologist but not by the surgeon.
3 Q. And what do you mean by the term "sketchy"?
4 A. Well, it's not -- you know, one likes to see as
5 a whole record where the surgeon has seen the patient
6 and made a notation that they readvised them of the
7 risks and inherent dangers, but the -- the surgeon has
8 indicated to the patient that the risks and benefits
9 again have been restated and that the need for surgery,
10 second surgery has been established, that one would like
11 to see that documented, but it wasn't. It was
12 implicitly referred to in Ferguson, the cardiologist,
13 notation, and I think that seems adequate. Perhaps not
14 ideal, but adequate. So that -- I'll leave it at that.
15 I can't remember if you had a question attached
16 to the other part.
17 Q. However, would you agree that it's not clear
18 what was explained or what information was provided by
19 the surgeon performing the surgery?
20 MR. SWEET: Objection. Vague as to what
21 surgery. The whole question is vague.
22 THE WITNESS: Are you referring to the first or
23 second?
24 MS. ELTANAL: Q. The second surgery.
25 A. The second surgery, again, I'm presuming,

33

1 because informed consent does involve some description,
2 that that was given to the patient by the cardiologist
3 at the time of the second surgery, and that the surgeon
4 had agreed with that, that there was some communication,
5 although it is not documented.
6 Q. And how does your opinion change if we assume
7 that the letter, the February 18th letter, was not
8 created by the patient? What is your -- would you agree
9 that the informed consent was lacking?
10 MR. SWEET: Objection. Vague.
11 THE WITNESS: No. I think I just answered
12 that, that I don't think that the informed consent was
13 as well documented as it could have been, but that it
14 was, according to Dr. Ferguson's note, it was adequate.
15 Again, there was a patient he knew, second surgery. The
16 patient was in the hospital in a somewhat compromised
17 state. One can only presume that it was a similar kind
18 of informed consent to the first surgery, although it is
19 not explicitly well documented.
20 MS. ELTANAL: Q. And you agree that many of
21 your opinions and conclusions in this matter are based
22 on presumptions and assumptions?
23 MR. SWEET: Objection. That question is vague
24 and compound.
25 THE WITNESS: I wouldn't agree with that. I

<p style="text-align: right;">34</p> <p>1 think that my conclusions are based on my many years of</p> <p>2 experience as a psychiatrist, dealing with many, many</p> <p>3 different schizophrenics and board-and-care homes and</p> <p>4 having done consultations in hospitals, and that all of</p> <p>5 that goes into my conclusions. All that information,</p> <p>6 experience over many years goes into my conclusions.</p> <p>7 MS. ELTANAL: I don't think I have any further</p> <p>8 questions.</p> <p>9 Did you mark for the record this time the</p> <p>10 changes to the depo?</p> <p>11 MR. SWEET: I did not. If you're done, I'll do</p> <p>12 that now.</p> <p>13 MS. ELTANAL: Yeah.</p> <p>14 MR. SWEET: Okay. I should have made a</p> <p>15 statement at the beginning of the deposition that I</p> <p>16 would like to reserve on behalf of Dr. Leahy the right</p> <p>17 to review the transcript and make changes or</p> <p>18 modifications which she feels are necessary within 30</p> <p>19 days, which is something we have to ask for that right</p> <p>20 in front of a Court. In State Court you just get that</p> <p>21 right. So I have now asked for it.</p> <p>22 Are we done?</p> <p>23 MS. ELTANAL: I think we're done.</p> <p>24 MR. SWEET: Thank you.</p> <p>25 THE REPORTER: Do you want a copy of the</p>	<p style="text-align: right;">36</p> <p>1</p> <p>2</p> <p>3 CERTIFICATE OF WITNESS</p> <p>4</p> <p>5</p> <p>6</p> <p>7 I, the undersigned, declare under penalty of</p> <p>8 perjury that I have read the foregoing transcript, and I</p> <p>9 have made any corrections, additions, or deletions that</p> <p>10 I was desirous of making; that the foregoing is a true</p> <p>11 and correct transcript of my testimony contained</p> <p>12 therein.</p> <p>13 EXECUTED THIS _____ day of _____</p> <p>14 _____, at _____.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 MARGO M. LEAHY, M.D.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">35</p> <p>1 transcript?</p> <p>2 MR. SWEET: I do. Just in the regular course,</p> <p>3 please.</p> <p>4 (Whereupon, the deposition was adjourned</p> <p>5 at 10:07 A.M.)</p> <p>6 ---oOo---</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">37</p> <p>1 REPORTER CERTIFICATE</p> <p>2 I hereby certify that the witness to the</p> <p>3 foregoing deposition was by me duly sworn to testify to</p> <p>4 the truth, the whole truth, and nothing but the truth in</p> <p>5 the within-entitled cause; that said deposition was</p> <p>6 taken at the time and place herein named; that the</p> <p>7 deposition is a true record of the witness's testimony</p> <p>8 as reported to the best of my ability by me, a duly</p> <p>9 certified shorthand reporter and a disinterested person,</p> <p>10 and was thereafter transcribed under my direction into</p> <p>11 typewriting by computer; that the witness was given an</p> <p>12 opportunity to read and correct said deposition and to</p> <p>13 subscribe the same. Should the signature of the witness</p> <p>14 not be affixed to the deposition, the witness shall not</p> <p>15 have availed himself or herself of the opportunity to</p> <p>16 sign or the signature has been waived.</p> <p>17 I further certify that I am not interested in</p> <p>18 the outcome of said action, nor connected with, nor</p> <p>19 related to any of the parties in said action, nor to</p> <p>20 their respective counsel.</p> <p>21 IN WITNESS WHEREOF, I have hereunto set my</p> <p>22 hand this February 5, 2008.</p> <p>23</p> <p>24 SANDRA L. CARRANZA</p> <p>25 CSR No. 7062</p>

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

11 (Page 38)

38

PREFERRED REPORTERS
CERTIFIED SHORTHAND REPORTERS
19229 Sonoma Highway, Suite 112
Sonoma, California 95476
Phone (707) 938-9227

February 5, 2008
TO: MARGO M. LEAHY, M.D.
1902 Webster Street
San Francisco, California 94115
RE: COYNESS L. ENNIX, JR., M.D. vs. ALTA BATES
SUMMIT MEDICAL CENTER
Deposition taken February 29, 2008
Reported by SANDRA L. CARRANZA, CSR No. 7062

Dear Dr. Leahy:

The original transcript of your deposition taken in the above-entitled action has been prepared and is available at this office for your reading, correcting and signing. In the alternative, you may wish to review your counsel's copy. Please notify this office and all counsel of any corrections you wish to make. Your rights regarding signature of this deposition are contained in the California Code of Civil Procedure Section 2025.520. Unless otherwise directed, your original deposition transcript will be sealed after 35 days.

If you wish to make arrangements to review the original transcript of your deposition, please contact this office during office hours, 9:00 to 5:00 Monday through Friday, to make an appointment.

Sincerely,

Sandra L. Carranza
CSR No. 7062

cc: All counsel

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

A	agreed 33:4	assess 15:16	big 6:14	4:4 37:24 38:9
ability 37:8	agreement	assessment 16:1	board 8:17	38:22
able 11:11,14,15	14:25 27:8,12	28:11	board-and-care	case 1:6 6:12
15:6,9 17:6	agrees 20:8	assume 33:6	19:13,20 24:1	7:10,11,15,16
18:23 30:18	Alta 1:7 5:15	Assumes 13:23	24:8 34:3	7:18 11:13
above-entitled	38:8	25:17	break 31:8	12:1 14:14
38:12	alternative	assumption	bring 18:11	15:18 16:3
absence 29:13	38:13	22:25	brought 11:7	21:5 22:25
abuse 7:13	alternatives	assumptions	18:10 24:11	30:11,13,17
accompanied	20:7,25 21:2	33:22	C	31:6
19:4 23:4	22:1,10	attached 32:15	C 1:6 3:1	cases 7:9 14:5,7
accompanying	amount 27:23	attorney 3:5,13	California 1:2	22:4
27:25	Andrew 2:10	5:20	1:24 3:7,15,21	categories 9:23
accurate 8:7	3:5	auditory 28:1	38:2,7,15	catheterization
accurately	anesthesia 30:8	available 38:12	called 4:9	12:12 16:4
11:16	anesthesiologist	availed 37:15	Campus 2:13	18:7
action 5:11,17	30:8	aware 8:9 25:6	capable 10:25	cause 37:5
11:4,11 17:10	answer 14:1	25:15,20	12:20,21	cc 38:24
31:12 37:18	17:22	27:10,13	14:22 23:5,20	Center 1:7 5:15
37:19 38:12	answered 20:8	30:22	capacity 12:25	38:8
actions 26:3	21:14 22:2	A.M 4:3 35:5	13:1,6 14:7	certain 19:22
acutely 18:11	33:11	B	28:5,8	29:2
addition 10:11	appeared 4:5	B 7:25	cardiac 12:12	certainly 26:9
additional 10:8	14:16	back 6:15 22:6	14:23,24 15:7	30:20 31:18
23:3	appears 8:8	30:1	16:4 18:6,8	31:25 32:1
additions 36:9	18:4	bad 24:9	30:18	CERTIFICA...
adequate 32:13	appointment	based 15:8	cardiologist	36:3 37:1
32:14 33:14	18:12,18	23:23,24	12:11,19 13:3	certified 1:23
adequately	19:16 24:10	33:21 34:1	13:13 15:19	8:18,19 37:9
18:17	24:13 38:19	basically 16:9	18:6,19 32:2	38:1
adjourned 35:4	appointments	28:10	32:12 33:2	certify 37:2,17
admission 19:7	19:5 24:5,5	Bates 1:7 2:11	cardiologists	change 28:17
adolescent 8:17	appreciate 5:8	5:15 9:1,7	15:14 17:16	33:6
adults 26:22	area 8:20	38:8	cardiology	changes 34:10
affixed 37:14	areas 8:15	beginning 5:24	15:16	34:17
agitated 18:12	arrangements	5:25 16:3	care 31:5	characterizati...
29:10,18 30:1	38:18	34:15	caregiver 18:10	27:21
30:3,12	ascertain 28:5	behalf 34:16	18:16 19:1,9	characterize
ago 7:11 8:13	asked 13:14	believe 8:1 11:5	19:10 23:4,12	27:25
17:15	14:13,15	22:3 29:19,25	23:19 24:11	charging 6:2
agree 16:18	15:14,15 17:4	benefits 20:7,25	24:16	check 5:23 19:5
22:8 31:22,24	31:4 34:21	21:2,13 22:1	caregivers	30:1
32:17 33:8,20	asking 9:8	22:10 32:8	16:16 18:11	child 8:17
33:25	16:23 21:6	best 37:8	Carranza 1:21	children 26:21
	26:2,10			choice 11:1

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

chronic 10:24 24:1,3 30:4	conclusion 11:11 15:11	10:20 14:18 28:23	25:13,15 33:8	38:18
circumstance 27:9	conclusions 12:1 15:2,5	contexts 10:21	credentials 20:3	depositions 6:5
circumstances 25:6,11	28:17 31:11	contract 10:23	CRR 1:21	6:11
Civil 38:15	31:14 33:21	11:1,16	CSR 1:21 4:4	describe 20:15
claim 11:7	34:1,5,6	control 15:25	37:24 38:9,23	description 19:6
claims 7:12	condition 17:5	18:15	current 8:13	33:1
clear 18:1 32:17	28:11	controlled	CV 8:1,7,10,12	designate 5:9
clinical 15:17	conduct 26:8	18:17	8:14	desirous 36:10
15:18 24:10	conducted	conversation	D	destabilized
29:14 31:18	10:14	20:11 23:11	D 2:1	24:14
Code 38:15	confident 17:9	conveyed 21:18	dangers 32:7	detail 27:9,19
come 24:12 27:7	17:12,18,23	21:21	date 5:22 25:8	determine
28:12	17:24,24	copy 8:7 34:25	dated 25:21	11:11,15 13:1
comfortable	confidential	38:13	day 24:9 36:13	14:15
13:8	1:14 5:9,10	correct 5:18,19	days 22:23	determining
commencing	14:20	5:21 8:2 20:3	34:19 38:17	12:20
4:3	confirm 9:1	20:22,23	deal 6:14	diagnoses 15:14
comment 31:2	confirmation	21:16 23:21	dealing 34:2	15:16
common 30:2	24:20	23:22 24:23	Dear 38:10	diagnosing
communication	connected 37:18	24:24 29:21	declare 36:7	13:10
33:4	consent 10:18	36:11 37:12	decompensated	diagnosis 14:3
community	11:12 14:6,25	correcting	18:16 24:7	Diagnostic
23:25	15:7,9 20:14	22:24 38:12	decompensates	27:20
compensated	21:11 25:22	corrections 36:9	18:25	different 6:6
18:4	26:13,20 27:3	38:14	decompensati...	8:12 10:21
completely 6:12	31:23 33:1,9	correspond	12:14	15:8 34:3
compound 9:25	33:12,18	9:12	deduce 25:8	difficult 13:6
13:24 31:16	consider 31:18	counsel 7:4 8:5	defect 22:24	directed 38:16
33:24	considered	9:6,16,20,22	defendant 1:8	direction 37:10
compromised	12:12	9:24 10:9	3:11 4:9 5:6	directly 19:8
33:16	consult 30:13	37:20 38:14	Defendant's 2:8	Disclosure 2:9
computer 37:11	consultant	38:24	6:18 9:3 25:1	7:24
conceded 28:13	10:13	counsel's 38:13	defense 7:18	discuss 23:12
concerning	consultation	counter-balan...	11:5,6	discussed 20:7
13:18 17:9	29:5,12,16	30:6	deletions 36:9	20:22 21:1,13
22:10 25:22	consultations	course 15:13	delusions 28:1	31:20
27:11 28:18	34:4	29:1 35:2	depending 27:9	discussing
31:6	contact 38:18	court 1:1 5:8	depo 34:10	20:24
concerns 25:25	contained 36:11	6:16 34:20,20	deposed 6:20	discussion
26:5	38:15	covered 31:11	deposition 1:12	16:20 22:9
concession	contemporan...	31:12,15	2:3 4:2 34:15	discussions 16:5
28:19	27:3	COYNESS 1:4	35:4 37:3,5,7	16:7
	context 7:9	38:8	37:12,14 38:9	disinterested
		created 25:12	38:11,15,16	37:9
				dispute 10:23

disputed 26:23 26:24 27:1	DSM4 27:19 duly 4:10 5:2 37:3,8	entailed 14:24 entire 8:23 9:2 equilibrium 30:15	expressed 22:13 extent 17:24	forward 16:1 found 24:21 four 7:10,19 17:15
disruptive 18:13	<hr/> E <hr/>	equipment 30:23	<hr/> F <hr/>	Francisco 3:7 3:15,21 38:7
distinguish 27:22	E 2:1 3:1,1,5	established 32:10	facilities 19:13 19:20 24:8	frequently 30:12
distressed 15:17	eight 6:9	ethical 26:8	fact 14:23 23:3	Friday 4:2 38:19
DISTRICT 1:1 1:2	either 27:21 30:8	evaluation 28:14,19	facts 13:23 25:17	front 34:20
disturbed 15:17	elderly 29:13	evaluations 10:2 29:2	factual 20:13 24:16,18 29:23	full 5:12 20:5
doctor 18:18 19:10,17 21:12 23:7 25:25 27:7	elective 23:1	event 26:13	familiar 29:1	fully 17:23 24:13
doctors 19:18 19:20	element 16:18	evidence 13:24 21:5 25:18 31:22	fantasy 27:23	function 24:2
doctor's 18:12 19:15 24:4 26:2	eligible 8:17	exactly 20:2 21:17	far 6:8 31:13	functional 28:7
document 7:25 9:9 25:12,16 26:10 27:3	Eltanal 2:6 3:13 5:4,5,5 6:10 6:20 8:21 9:5 9:10,15 10:7 12:25 13:8,15 14:5,12 15:1 16:25 17:13 19:1 20:1,4 21:9,23,25 23:9,18 24:25 25:3,20 26:7 26:19 27:10 28:3,25 31:4,8 31:10,21 32:24 33:20 34:7,13,23	examination 2:5 5:4 10:4 29:8	February 1:13 4:2 24:21 25:9 25:21 28:3 31:21 33:7 37:22 38:5,9	functioning 18:23,24 further 34:7 37:17
documentation 23:10	eltanal@km... 3:17	examinations 6:5 15:21	fee 6:2,4,6	Furthermore 18:19
documented 32:2,11 33:5 33:13,19	EMBLIDGE 3:4	examined 4:10	feel 11:25 13:8	<hr/> G <hr/>
documents 2:10 8:23,25 9:7,14 9:16,19,23,24 10:2,8 24:19 25:21 28:12	emergency 22:4 22:16,18,22	examining 29:8	feels 34:18	general 12:7,8 15:9 20:14 24:6 27:20 30:3
dose 30:9	enclosing 2:10	EXECUTED 36:13	felt 18:17,21	generally 9:9,10
dozen 10:15	ends 9:11	Exhibit 6:18 7:23,25 9:3 25:1	Ferguson 14:3 27:14 32:12	give 14:24 15:7 15:9 17:4
Dr 7:21 13:16 13:20 14:2,3 16:6,7,9 20:6 20:11,22 25:15,22 27:11,14 28:13,18 33:14 34:16 38:10	Ennix 1:4 7:21 13:16,20 14:2 16:6,7,9 20:6 20:22 25:15 25:22 27:11 28:13 38:8	exhibits 2:8 5:9	Ferguson's 33:14	given 9:20 12:10 19:6 33:2 37:11
drafts 8:4	Ennix's 20:11 28:18	exist 31:22	find 27:19	gives 20:14
driver 19:10		experience 10:13 13:21 19:13 23:25 24:10 26:12 27:24 34:2,6	findings 29:14	go 6:15 9:13 16:1 18:18 22:6,20 24:3 30:1
		expert 2:9 5:14 5:18 7:23 10:13	finished 21:23	going 6:15 8:25 14:23 20:15 25:25
		expertise 13:2	firm 10:5	good 18:8 24:12 28:14,20
		explain 7:9 19:2 27:15	first 4:10 20:5 22:20,23,24 31:25 32:22 33:18	gotten 30:13
		explained 32:18	five 25:21	
		explicitly 33:19	follows 5:2	
			foregoing 36:8 36:10 37:3	
			forensic 8:19	
			former 25:22	
			forth 4:11	

ground 31:13	21:1 25:12	information	knowledge 13:2	
guess 26:23	28:14,20	32:18 34:5	24:16,18	L0001 9:7,11
G0001 2:11	30:10	informed 10:18	29:23	L0001-L0657
G1391 2:11	ideal 32:14	11:1,12 14:6	known 18:2	2:11
H	ideation 28:2	17:14 20:14	L	L0657 9:7,11
hallucination	identification	21:11 22:5	L 1:4,21 4:4	M
28:1	6:19 9:4 25:2	26:13 27:3	37:24 38:8,9	M 1:12 2:3 4:7
hand 37:22	identity 19:23	31:23 33:1,9	38:22	5:1 36:21 38:6
happen 22:21	19:25	33:12,18	labels 9:1	main 26:23
happened 26:10	illness 10:24	inherent 32:7	lacking 31:23	maintain 30:5
26:11	24:3 28:1	instance 19:22	31:24 33:9	major 27:21
happy 22:7	illustrating	instant 12:14	largely 23:24	making 7:12
harassment	28:13	interested 37:17	law 3:5,13 10:5	11:1 14:3
7:13	imagine 26:24	interview 29:8	Leaahy 38:10	22:25 23:18
health 13:18,22	implicit 24:19	investigation	Leahy 1:12 2:3	36:10
16:15	implicitly 32:12	28:23	4:7 5:1,13	man 18:3
heart 13:10	important	involve 10:17	34:16 36:21	Manual 27:20
help 25:14	16:18 27:2,5,8	14:7 33:1	38:6	Margo 1:12 2:3
helpful 17:2	30:5	involved 15:24	leave 32:14	4:7 5:1,13
hereinafter 4:11	importantly	30:17,22	legal 14:8,9	36:21 38:6
hereunto 37:21	18:7	involves 10:3	lengthy 27:19	mark 6:10,16
Highway 1:24	impossible	involving 7:11	letter 2:10,12	8:24 34:9
38:2	28:10	issue 10:17	9:5 24:21 25:3	marked 2:8
Historically	impression	J	25:7 28:4,7,9	6:18 7:23 9:3
15:23	31:19	January 5:25	31:22 33:7,7	14:19 24:25
history 12:5	inability 27:22	5:25 25:9	level 13:1	25:1
homes 24:1 34:3	inaccuracies 8:9	Jessie 2:12	levels 30:5,14	marking 8:22
honestly 14:11	include 11:17	JR 1:4 38:8	life 24:4	Mathew 2:10
hospital 11:13	incomplete	K	likes 32:4	matter 5:6 6:3,7
11:17 26:20	12:22 13:11	KAUFF 3:12,19	limitation 23:4	9:2 11:20
30:23 33:16	13:24 28:21	kind 10:3 18:22	limitations	33:21
hospitals 34:4	30:24	24:19 33:17	24:17	McCLAIN 3:12
hour 4:3 6:4,5	indicate 29:6	knew 18:10,17	list 15:4	3:19
hours 6:7,9	indicated 12:11	23:4 24:16	little 16:23	McGUIRE 3:12
38:19	14:4 22:4 32:8	33:15	long 12:5 20:17	3:19
hundred 6:24	indicates 22:17	know 10:24	Longer 7:18	MDs 15:23
hypothetical	27:7	15:16,20 17:8	look 6:15 9:8	18:13
12:23 13:12	indicating 9:6	19:12 20:2	19:7 20:4,5	mean 12:8 13:6
13:25 28:21	individual 11:8	21:8,17 24:12	22:6	17:25 18:1
30:25	11:12 12:20	25:10,19	looks 15:13	19:2,25 32:3
I	13:10 19:23	26:18 27:6,18	lot 18:18 31:12	meaning 19:17
idea 14:24 19:9	23:12	32:4	lower 30:9	means 27:5
20:10,12,13	individual's	knowing 24:2		medical 1:7
	11:18 14:7			2:13 5:15 12:7
	17:1 28:5			

12:8 17:16	need 16:9 22:5	29:14	parents 26:21	20:16,16
24:5,22 30:19	22:13 32:9	obtained 26:13	part 32:16	21:20,22 22:1
38:8	needed 26:18	occasion 27:24	participate	37:6
medication 18:9	needs 24:17	occasions 15:19	24:13	plaintiff 1:5 3:3
29:19 30:4,14	never 14:2 16:7	occurred 26:14	particularly	7:21 10:3
mental 10:24	17:14 26:17	odd 17:3	24:9	14:16,16
13:1,6,18,22	26:23,24	office 12:13	parties 37:19	plaintiff's 2:9
17:5 24:3 28:5	new 30:22,23	18:15 38:12	patient 11:21	5:20 7:3,11,23
28:8,11	nonpsychiatrist	38:13,19,19	13:18,22 14:3	8:5 9:6,16,20
mentally 12:20	15:23	Okay 14:21	14:17 16:12	9:22,24 10:9
mention 12:13	normal 10:2	34:14	16:12,16	plan 15:21
mentioned 9:13	normally 10:1	ones 8:13 9:13	17:14 18:17	please 5:12 35:3
22:15 29:17	22:19	one's 13:1	18:20 20:8,11	38:13,18
mentions 22:1	NORTHERN	oOo 1:3 2:15	20:15,22 22:5	plus 6:24
met 16:12 17:8	1:2	3:22 4:13 35:6	22:9,14 23:5	point 13:15 17:5
17:14	notation 22:8	opine 30:20	23:13,20	17:6,8 21:20
mind 7:17 16:19	28:18 29:24	opinion 12:19	24:17,22 26:1	29:18
17:1 21:15	32:6,13	13:9,17,20,21	26:2,10 27:7	positive 29:14
30:6	note 21:7,11	14:6 15:6 17:1	27:12,21 28:4	Post 3:14,20
misleading	27:6,10,13	17:4,9,18 23:5	28:6,9 29:18	postoperative
26:16	33:14	23:18,19,23	30:1,4,4 32:5	29:24
misstates 21:4	noted 22:12	23:24 24:23	32:8 33:2,8,15	postoperatively
modifications	Notice 4:1	26:7 28:25	33:16	30:2,10
8:10 34:18	notify 38:13	29:22 31:5,19	patients 15:12	practice 8:16
moment 18:13	numbered 9:7	33:6	15:24 18:14	26:20
27:22	numbering 6:12	opinions 12:1	25:22 29:1,4	PREFERRED
Monday 38:19	numbers 9:12	14:13 15:2,4	patient's 12:16	1:23 38:1
Montgomer 3:6	nurse 19:11,17	28:17 31:11	30:15	preliminary 5:7
months 16:4	nurses 19:19,21	31:14 33:21	penalty 36:7	prepared 25:7,8
morning 31:20		opportunity	people 30:2	38:12
MOSCONE 3:4	O	37:12,15	performed 26:1	presence 29:7
multiple 15:19	oath 7:1	order 1:15 5:10	performing	present 20:6
M.D 1:4,12 2:3	objection 9:25	6:16 29:11,15	28:15 32:19	31:25
4:7 5:1 36:21	12:22 13:4,11	original 38:11	perjury 36:8	presentation
38:6,8	13:23 14:9	38:16,18	person 10:23	15:18,19
N	16:21 17:11	outcome 37:18	11:15 12:4	23:12
N 2:1 3:1	17:19,21	outlined 21:13	16:2,20 17:2	presented 12:5
name 5:5,12	19:24 21:4,22	overseen 19:20	19:4,25 20:1	president 2:13
14:18 19:25	23:15 25:17	P	29:9 37:9	24:22
named 37:6	26:4,15 27:4	P 3:1,1	personally 4:4	presume 33:17
nature 20:10	27:17 28:21	page 2:5 20:4	Phone 1:25 38:3	presumes 15:25
21:14	30:24 31:16	23:2	physician 26:12	21:17 28:6
necessary 12:4	32:20 33:10	paragraph 20:6	29:15	presuming
34:18	33:23	paranoid 28:1	pile 9:13	18:16 20:19
	observable		place 5:11 17:15	20:20 25:13

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

32:25 presumption 24:11 presumptions 33:22 pretty 21:15 22:21 previous 30:14 prior 7:20 22:9 23:13 26:2 28:15 29:2,5 probably 10:15 10:22 problem 13:10 procedure 14:25 15:10 16:2 17:14 19:6 20:15 21:12 22:23 22:24,24 23:1 27:14 31:3 38:15 procedures 15:21 25:23 30:23 proceed 20:9 proceedings 1:14 14:8,10 production 9:17 protective 1:15 5:10 provide 5:14,18 9:24 11:10 provided 7:3 8:4,21 9:15 11:12,20 32:18 providing 13:9 psychiatric 8:19 11:18,19,20 15:12,24 19:19 28:14 28:19 29:2,4,5 29:12,15 30:3 30:4,13	psychiatrically 15:15 psychiatrist 7:12 12:17 13:17 34:2 psychiatrists 15:15 18:14 psychiatry 8:18 psychoanalyst 8:18 psychological 11:18 12:14 17:5 psychologist 12:17 13:16 psychotic 18:12 pursuant 1:15 4:1 put 6:15 <hr/> Q QUADRA 3:4 question 10:25 11:21 13:5,19 16:13 17:3,22 23:17 32:15 32:21 33:23 questions 20:8 21:13 22:2 34:8 quickly 22:21 quite 16:22 quoting 19:3 <hr/> R R 3:1 reached 27:12 read 30:19 31:17 36:8 37:12 reading 21:15 38:12 readvised 32:6 reality 27:22 really 9:13 14:2	20:25 31:1 realm 13:2 reason 29:6,22 reasons 15:11 20:16 recall 5:16 7:8 21:10 28:16 31:15 received 10:8,11 Recess 31:9 recollect 22:11 record 5:9 6:4 8:23 10:4,14 12:6,7,8,16 17:25 19:4 20:21 21:15 21:18,19 22:16 23:11 29:25 31:18 32:5 34:9 37:7 records 8:22 9:2 10:5 11:14,17 11:18,19,21 11:23,25 12:10 17:16 18:3 30:19 recovery 20:18 refer 19:1 20:24 reference 8:25 23:2 referenced 24:20 29:18 29:19 references 8:1 27:14 referred 32:12 referring 12:9 25:4 32:22 reflected 12:7 reflecting 27:3 regard 13:7 17:12,13 26:6 regarding 28:22 38:15 regimen 18:9	regular 35:2 related 37:19 relationship 7:20 18:22 relevant 12:1 17:8 relied 9:19 10:4 reluctant 31:2 relying 13:17 17:15 remember 7:10 7:13,16,18 10:10,10,15 10:22 14:11 14:11 32:15 REMEMBER... 4:1 remission 18:5 render 13:21 14:13 31:5 rendered 14:6 15:1 17:10 31:12 rendering 16:25 24:22 rephrase 16:24 report 8:1,5 20:5 22:17 23:2 29:17 reported 1:20 37:8 38:9 reporter 5:8 34:25 37:1,9 REPORTERS 1:23,23 38:1,1 representing 5:6 request 9:23 10:1 11:23 16:10 reserve 34:16 residents 19:15 residing 19:14 respective 37:20 response 8:22	restated 32:9 restored 30:14 30:15 retained 5:14,17 5:20 9:22 11:4 11:5,6 retention 5:22 review 6:4 10:4 10:14 34:17 38:13,18 reviewed 10:6 28:13 reviewing 28:3 right 34:16,19 34:21 rights 38:15 risk 30:7,7,8 risks 20:7,17,25 21:1,13,25 22:10 32:7,8 rock-and-roll 10:23 Rossana 3:13 5:5 roughly 20:16 routinely 29:5 29:15 RPR 1:21 4:4 rule 24:6 <hr/> S S 3:1,13 San 3:7,15,21 38:7 Sandra 1:21 4:3 37:24 38:9,22 saying 16:23 says 18:18 20:6 schizophrenia 11:3 12:6 27:16 schizophrenic 18:25 29:12 schizophrenics 18:2,3 24:1
--	---	---	---	---

34:3	situation 22:16	statement 34:15	surrounding	testimony 5:15
scope 14:12	24:15	statements 5:7	25:6	5:18 6:6,25
sealed 38:16	situations 10:17	STATES 1:1	sustained 27:23	21:5 36:11
second 21:19	sketchy 32:1,3	Statistical 27:20	Sweet 2:10 3:5	37:7
22:5,9,13,17	skipping 7:17	Street 3:6,14,20	6:11 9:8,25	Thank 34:24
27:11 29:25	someone's	38:6	12:22 13:4,11	thing 20:18
32:1,10,23,24	16:19 17:4	subpoena 8:22	13:23 14:9,19	26:23 28:2
32:25 33:3,15	somewhat 13:15	9:6	16:21 17:11	29:11 30:11
Section 38:16	22:22 33:16	subscribe 37:13	17:19,21	things 10:12
see 23:7 26:9	Sonoma 1:24,24	substance 20:10	19:24 21:4,22	15:8,13 19:12
32:4,11	38:2,2	substantiation	21:24 23:7,15	20:24
seeing 10:3	sorry 17:20	20:13	25:17 26:4,15	think 7:8 12:4
18:20 21:10	21:24 23:17	subtle 18:24	27:4,17 28:21	14:4 16:3 17:2
seen 12:13,16	sort 12:14 20:18	sufficient 29:20	30:24 31:16	17:3 18:19,20
18:2,2,5 28:18	24:5 28:2	Suite 1:24 3:6	32:20 33:10	19:3 21:6 27:2
32:5	29:11	3:14,20 38:2	33:23 34:11	27:6,9 28:24
send 10:5 19:14	speak 16:10	summary 11:10	34:14,24 35:2	30:6 32:13
sense 18:21	17:2	Summit 1:7	sweet@meqla...	33:11,12 34:1
sent 10:12	special 8:15	2:13 5:15 38:8	3:9	34:7,23
sequential 6:13	specialize 8:15	supportive 28:7	sworn 4:10 5:2	thinking 26:25
6:16	specific 9:23	supports 23:5	37:3	30:10
serious 24:3	10:1 19:5	23:19	symptomatol...	thought 14:2
services 6:3 7:3	20:13 31:3	supposed 6:13	29:7	three 23:2
set 4:11 37:21	specifically	sure 14:1 16:22	symptoms	time 8:10 11:2
sexual 7:12,13	22:12	23:14,16	27:15,18,25	12:7,15 18:6
shape 24:12	specifics 7:14	31:10		20:18 27:22
short 11:10	spelled 21:7,11	surgeon 30:9,18	T	27:23 28:5
shorthand 1:23	22:21	32:2,5,7,19	take 20:16,17	31:15 33:3
37:9 38:1	spells 20:21	33:3	26:22 31:8	34:9 37:6
show 9:10	spent 6:7	surgeon's 30:6	taken 3:19 6:11	times 6:23,24
side 11:5,6	spoke 20:19	surgeries 29:3,6	24:4,9 31:9	7:6,7,7,8
sign 37:16	stability 12:6	surgery 12:12	37:6 38:9,11	10:14,15 18:5
signature 37:13	stable 16:2	14:23,24 15:7	talk 16:9,15	18:7
37:16 38:15	stack 8:23	15:22 18:8	talked 17:7	timing 28:22
signed 11:16	staff 2:13 19:15	21:19 22:6,9	talking 29:10	today 6:14
28:10	19:17,18	22:13,17,18	technicians	told 23:6,21
signing 11:2	24:22	22:20 23:13	19:19	tolerate 16:2
38:12	stamped 2:11	26:1 27:11	tell 14:12 18:23	touch 29:9
similar 33:17	standard 21:15	28:15 29:25	18:24	training 13:21
simply 19:10	29:1 31:5	30:7,7,17,21	tend 15:23 29:4	transcribed
22:12 28:10	star 10:24	31:6,25 32:1,9	term 19:2 32:3	37:10
Sincerely 38:20	starts 9:11	32:10,19,21	terms 30:7	transcript 34:17
single 9:9	state 5:12 16:19	32:24,25 33:3	testified 4:10	35:1 36:8,11
sitting 22:11	17:1 33:17	33:15,18	5:2	38:11,16,18
26:24	34:20	surgical 31:2,3	testify 37:3	treatment 26:21

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

26:22 27:8	19:14,18,19	within-entitled	07-2486 1:6	5
treatments	21:11 30:5	37:5		52:6 37:22 38:5
24:14		witness 2:9 4:9	1	5:00 38:19
trial 6:6	V	7:24 9:12 10:1	12:9 6:18 7:23	
true 16:3 36:10	vague 13:5,11	12:24 13:5,13	10:07 35:5	6
37:7	13:24 14:9	14:1,21 16:22	112 1:24 38:2	62:9
truth 37:4,4,4	16:21,23	17:12,20,23	16th 5:25	
two 7:7,7,8 20:4	17:19,21	20:2 21:6 23:8	18 28:3	7
type 19:25 20:1	19:24 21:14	23:16 25:19	18th 24:21	7062 1:21 4:4
30:16	21:22 23:15	26:5,17 27:6	25:21 31:21	37:24 38:9,23
typewriting	26:4,15 27:4	27:18 28:24	33:7	707 1:25 38:3
37:11	27:17 30:24	31:1,17 32:22	1902 38:6	
	31:16 32:20	33:11,25 36:3	19229 1:24 38:2	9
U	32:21 33:10	37:2,11,13,14	1970s 10:23	92:11
Uhm-hum 8:3	33:23	37:21	11:7	9:00 38:19
ultimately	validate 26:2	witness's 37:7	2	9:07 4:3
15:21	Vandall 2:10	woman 7:11		938-9227 1:25
uncommon 22:3	varies 27:9	words 24:18	22:10 9:3	38:3
30:11	verbal 26:21,22	workup 19:7	2/18/05 2:12	94104 3:7,15,21
uncooperative	versions 8:4,12	wouldn't 13:14	2/27/08 2:10	94115 38:7
29:11	voluminous	17:7 29:15	2001 18:21	95476 1:24 38:2
undergo 15:20	11:13	31:24 33:25	2005 24:21 25:9	
24:13	vs 1:6 38:8	write 28:9	25:21 28:4	
undergoing		writes 21:17	31:21	
29:2	W	written 24:19	2008 1:13 4:2	
undersigned	waived 37:16	26:25 27:2	5:24 37:22	
36:7	want 6:17 7:7	wrote 28:6	38:5,9	
understand	15:24 18:14		2025.520 38:16	
6:25 11:16	31:10 34:25	X	2100 3:6	
14:8 15:7 21:1	wanted 10:5,11	X 2:1	220 3:6	
23:16 29:9	wasn't 13:18		25 2:13	
30:19	17:25 21:23	Y	2600 3:14,20	
understanding	32:11	Yeah 34:13	29 1:13 4:2 38:9	
14:22 16:19	way 10:2 28:4	year 26:1,13	3	
23:6,20 30:16	Webster 38:6	years 7:11,19	32:12 25:1	
understood	went 18:8	8:13 10:16	30 34:18	
11:2	we're 6:12	11:14 17:15	31st 21:20	
undertaken	34:23	18:20 23:25	35 38:16	
21:12	we've 31:11,12	34:1,6	362-3599 3:8	
unethical 26:9	WHA 1:6	yesterday 6:14		
union 8:18	WHEREOF		4	
UNITED 1:1	37:21	\$	415 3:8,16	
unstable 24:7	willing 15:25	\$400 6:4	421-3111 3:16	
urgent 22:22	wish 38:13,14	0	450 6:5	
usually 18:13	38:18			

EXHIBIT 1



1 G. SCOTT EMBLIDGE, State Bar No. 121613
2 RACHEL J. SATER, State Bar No. 147976
3 ANDREW E. SWEET, State Bar No. 160870
4 MOSCONE, EMBLIDGE, & QUADRA, LLP
5 220 Montgomery Street, Suite 2100
6 San Francisco, California 94104-4238
7 Telephone: (415) 362-3599
8 Facsimile: (415) 362-2006

9 Attorneys for Plaintiff Coyness L. Ennix Jr., M.D.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 COYNESS L. ENNIX JR., M.D.,

13 Plaintiff,

14 vs.

15 ALTA BATES SUMMIT MEDICAL
16 CENTER,

17 Defendant.

Case No. C 07-2486 WHA

18 PLAINTIFF'S EXPERT WITNESS
19 DISCLOSURE

20 Plaintiff Coyness L. Ennix Jr., M.D. submits the following expert witness disclosure
21 pursuant to Rule 26 of the Federal Rules of Civil Procedure and the Joint Stipulation and Order
22 to Enlarge Time for Disclosure of Expert Reports of (1) Cardiac Surgeon Experts and (2)
23 Statistician Experts ("the Order"). Dr. Ennix reserves the right to supplement and/or amend
24 these disclosures and attached reports.

25 I. EXPERTS WINESES THAT PLAINTIFF MAY USE TO SUPPORT HIS
26 CLAIMS.

27 1. William S. Weintraub, MD, FACC, FAHA, Cardiology Section Chief at
28 Christiana Care Health System in Newark, Delaware; Director of the Christiana Care Center for
Outcomes Research, to testify regarding statistical issues. (302-733-1200; Christiana Care

1 Health System, 4755 Ogletown-Stanton Rd. Newark, Delaware, 19718.) Dr. Weintraub's report
2 will be served on February 8, 2002, in accordance with the Order.

3 2. Alex Zapolanski, M.D., Director of Cardiac Surgery, Valley Columbia Heart
4 Center, to testify regarding cardiac surgery standard of care issues and the validity of the NMA's
5 criticisms of Dr. Ennix. (201-251-3286; Valley Columbia Heart Center, 223 North Ban Dien
6 Ave., Richwood, NJ, 07450.) Dr. Zapolanski's report will be served on February 8, 2008 in
7 accordance with the Order.

8 3. Eugene Spiritus, M.D., Chief Medical Officer, University of California, Irvine
9 Medical Center, to testify regarding peer review issues. (714-456-6844; 333 City Blvd. West,
10 Suite 1810, Orange, California 92868.) Dr. Spiritus' report is attached hereto as Exhibit A.

11 4. Margo M. Leahy, M.D. to testify regarding whether Dr. Ennix obtained informed
12 consent relating to the schizophrenic patient defendant has identified as ABS-001. (415-929-
13 7789; 1902 Webster Street, San Francisco, California 94115.) Dr. Leahy's report is attached
14 hereto as Exhibit B.

15 5. Jed Greene, CPA, CMA, Director, Forensic and Litigation Consulting, FTI
16 Consulting, Inc. FTI Consulting, to testify regarding damages issues. (415.283.4221; One Front
17 Street, Suite 1600, San Francisco, CA 94111.) Mr. Greene's report is attached hereto as
18 Exhibit C.

19
20 **II. NONRETAINED EXPERTS WITNESSES THAT PLAINTIFF MAY USE TO
SUPPORT HIS CLAIMS.**

21 Plaintiff designates the following non-retained experts who may present expert testimony
22 at trial.

23
24 1. Howard Barkan, DrPH. Plaintiff has already produced a report and contact
25 information for this expert.

26 2. Richard Shaw, PhD. Plaintiff has already produced a report and contact
27 information for this expert.

1 3. Dr. Bruce Reitz. Plaintiff has already produced a report and contact information
2 for this expert.

3 4. Dr. John Rea. Plaintiff has already produced a report and contact information for
4 this expert.

5 5. Dr. Jon Walkes. Plaintiff has already produced a report and contact information
6 for this expert.

7 6. Dr. Bruce Lytle. Plaintiff has already produced a report and contact information
8 for this expert.

9 7. Dr. Forrest Junod, to testify as to the systemic issues at Alta Bates Campus and
10 any other issues or investigation that lead to the Junod Report.

11 8. Dr. Noli Silva, to testify as to the systemic issues at Alta Bates Campus that lead
12 to Junod Report, Dr. Ennix's performance on cases during which Dr. Silva was present, and her
13 experience relating to peer reviews of other non-white and white physicians at ABSMC.

14 9. Dr. Ron Dritz, to testify as to the systemic issues at Alta Bates Campus that lead
15 to Junod Report, his experience relating to peer reviews of other non-white and white physicians
16 at ABSMC, his involvement with the peer review process, and Dr. Ennix's surgical skill and
17 competence.

18 10. Dr. Maura Daugherty, to testify as to Dr. Ennix's surgical skill and competence,
19 her involvement with the peer review process, her experience relating to peer reviews of other
20 non-white and white physicians at ABSMC, and the assessment of Dr. Ennix's performance in
21 cases where Dr. Daugherty was present.

22 11. Dr. Emily Reinys, to testify as to Dr. Ennix's skill and competence, her
23 involvement with the peer review process, and her experience relating to peer reviews of other
24 non-white and white physicians at ABSMC.

25 12. Dr. Joe Bermudas, to testify as to his involvement with the peer review process,
26 his experience relating to peer reviews of other non-white and white physicians at ABSMC and
27 Dr. Ennix's skill and competence.
28

1 13. Dr. Terry Daugherty to testify as to his involvement with the peer review process,
2 his experience relating to peer reviews of other non-white and white physicians at ABSMC and
3 Dr. Ennix's skill and competence

4 14. Dr. Joe Wong, to testify as to his involvement with the peer review process, his
5 experience relating to peer reviews of other non-white and white physicians at ABSMC and Dr.
6 Ennix's skill and competence.

7 15. Dr. Hon Lee, to testify as to his assessment of Dr. Ennix's four minimally
8 invasive cases, his involvement in the peer review process, his assessment of Dr. Ennix's
9 competence and skill, the proctorship process, communications with ABSMC regarding that
10 process, the decision to initiate a second peer review of the ten cases, his assessment of any or all
11 of the ten cases and his experience relating to peer reviews of other non-white and white
12 physicians at ABSMC. His reports regarding Dr. Ennix's cases are in defendant's possession.

13 16. Dr. Junaid Khan, to testify as to the assessment of the ten cases, his involvement
14 in the peer review process, communications between him and any of the individual defendants
15 regarding Dr. Ennix's peer review, his experience relating to peer reviews of other non-white and
16 white physicians at ABSMC and his assessment of Dr. Ennix's competence and skill. Dr.
17 Khan's letter regarding Dr. Ennix's performance is in defendant's possession.

18 17. Dr. Rollington Ferguson, to testify as to the assessment of any or all of Dr.
19 Ennix's four minimally invasive cases, and his experience relating to peer reviews of other non-
20 white and white physicians at ABSMC.

21 18. Dr. Dhun Sethna, to testify as to the assessment of any or all of Dr. Ennix's four
22 minimally invasive cases and any or all of the ten cases, and his experience relating to peer
23 reviews of other non-white and white physicians at ABSMC.

24 19. Dr. Dennis Drew, to testify as to the six additional cases subject to a second peer
25 review and Dr. Ennix's skill and competence regarding those cases, and his experience relating
26 to peer reviews of other non-white and white physicians at ABSMC.

1 20. Dr. Gregory Quinn, to testify as to the six additional cases subject to a second
2 peer review and Dr. Ennix's skill and competence regarding those cases, and his experience
3 relating to peer reviews of other non-white and white physicians at ABSMC.

4 21. Dr. General Hilliard, to testify as to the six additional cases subject to a second
5 peer review and Dr. Ennix's skill and competence regarding those cases, and his experience
6 relating to peer reviews of other non-white and white physicians at ABSMC.

7 22. Dr. Paul Ludemere, to testify as to the six additional cases subject to a second
8 peer review and Dr. Ennix's skill and competence regarding those cases, and his experience
9 relating to peer reviews of other non-white and white physicians at ABSMC.

10 23. Dr. Gary Woodworth, to testify as to the six additional cases subject to a second
11 peer review and Dr. Ennix's skill and competence regarding those cases, and his experience
12 relating to peer reviews of other non-white and white physicians at ABSMC.

13 24. Dr. Bob Gwynn, to testify as to the six additional cases subject to a second peer
14 review and Dr. Ennix's skill and competence regarding those cases, and his experience relating
15 to peer reviews of other non-white and white physicians at ABSMC.

16 25. Joan Shields, RN, to testify as to fact that Dr. Ennix adequately attended to patient
17 in question on May 5, 2005.

18 26. Carolyn Wong, RN, to testify as to fact that Dr. Ennix adequately attended to
19 patient in question on May 5, 2005.

20 27. Margaret C. Tavaré, RN, to testify as to fact that Dr. Ennix adequately attended to
21 patient in question on May 5, 2005.

22 28. Dr. Brian Cain, to testify as to the proctorship process, communications with
23 ABSMC regarding that process, his assessment of Dr. Ennix's surgical skill and competence and
24 his experience relating to peer reviews of other non-white and white physicians at ABSMC.

25 29. Dr. Dennis Durzinsky, to testify as to the proctorship process, communications
26 with ABSMC regarding that process, his assessment of Dr. Ennix's surgical skill and
27 competence and his experience relating to peer reviews of other non-white and white physicians
28 at ABSMC.

1 30. Dr. David Alyono, to testify as to the proctorship process, communications with
2 ABSMC regarding that process, his assessment of Dr. Ennix's surgical skill and competence and
3 his experience relating to peer reviews of other non-white and white physicians at ABSMC.

4 31. Dr. John Jones, to testify as to the proctorship process, communications with
5 ABSMC regarding that process, his assessment of Dr. Ennix's surgical skill and competence and
6 his experience relating to peer reviews of other non-white and white physicians at ABSMC.

7 32. Dr. Thomas Gonda, to testify as to the proctorship process, communications with
8 ABSMC regarding that process, his assessment of Dr. Ennix's surgical skill and competence and
9 his experience relating to peer reviews of other non-white and white physicians at ABSMC.

10 33. Dr. Coyness L. Ennix, Jr., to testify to all aspects of the peer review process and
11 his allegations in the complaint, the facts surrounding the cases for which he was criticized, the
12 damages suffered as a result of the peer review, his agreements with his former business
13 partners, and his experiences of peer reviews of other non-white and white physicians at
14 ABSMC.

15
16 Dated: January 25, 2008

MOSCONE, EMBLIDGE & QUADRA, LLP

17
18
19 By: 

G. Scott Emblidge
Rachel J. Sater
Andrew E. Sweet

20
21 Attorneys for Coyness L. Ennix Jr., M.D.
22
23
24
25
26
27
28

PROOF OF SERVICE

Case No. C 07-2486 WHA

I, Omar Lateef, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action.

On December 21, 2007, I served the attached:

• **PLAINTIFF'S EXPERT WITNESS DISCLOSURE**

on the interested party(ies) named below:

Maureen E. McClain

Alex Hernaez

Matthew P. Vandall

Kauff McClain & McGuire LLP

One Post Street, Suite 2600

San Francisco, California 94104

I served the attached document(s) in the manner indicated below:

☒ **BY PERSONAL SERVICE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed December 21, 2007, at San Francisco, California.


Omar Lateef

Margo M. Leahy, M.D.

1902 WEBSTER STREET
SAN FRANCISCO, CA. 94115

TEL (415) 929-7789 FAX (415) 566-1278

January 22, 2008

Independent Record Review: Psychiatric

Coyness L. Ennix, Jr., M.D. v. Alta Bates Summit Medical Center
Case No. C 07 -2486
United States District Court, Northern District of California

Identifying Information:

I am a psychiatrist with Board Certification in Psychiatry & Neurology. I graduated from the University of Maryland School of Medicine in 1973, and have been licensed in the State of California since 1974 (G 28374). I completed my psychiatric training at Stanford University Medical Center from 1974-1978. I am currently an Associate Clinical Professor at the University of California San Francisco and have a full-time private practice in San Francisco (complete CV attached). Over the past thirty years I have conducted several hundred psychiatric examinations involving a variety of issues in civil litigation. I have also been deposed in some of these cases and testified in trial in others (list of cases over past four years attached).

I was contacted by Mr. Emblidge in early January 2008 to review records in the above referenced legal case. More specifically, I was asked to review the medical records of a particular patient, ABS-001, who had been a patient of the plaintiff, Dr. Ennix. This man had suffered with schizophrenia for many years and had been hospitalized on numerous occasions. He was living in a board and care facility at the time of the surgery. The issue I was requested to address was whether or not the patient was capable of adequately understanding what had been told to him by Dr. Ennix when he obtained informed consent for the surgery.

Records Reviewed:

1. National Medical Audit Documents. These included a review of ten clinical cases of Dr. Ennix involving cardiothoracic surgery. ABS-001 was one of the cases.

2. Correspondence from Drs. Paxton and Isenberg as representatives of the Ad Hoc committee of Summit Medical Center to Dr. Smithline re: an outside review of Dr. Ennix's cases by Mercer Human Resource Consulting, Inc.
3. Meeting minutes of 2/9/04 of the Summit Surgery Department.
4. Correspondence from Dr. Ennix to Dr. Paxton re: Mercer findings.
5. Confidentiality Stipulation and Protective Order.
6. Correspondence from patient to President of Summit Medical Center dated February 18, 2005 re: his medical care by Dr. Ennix.
7. Summit Medical Center records for patient including previous hospitalization for cardiac catheterization.

Review of Medical Records of Patient ABS-001:

Issue of Informed Consent

Patient ABS-001 was admitted to Summit Medical Center on 1/28/04 with aortic insufficiency for the purpose of a minimally invasive surgical correction of his aortic valve problem. His care was provided by Dr. Rollington Ferguson as his admitting physician and cardiologist, and by Dr. Coyness Ennix as his cardiothoracic surgeon. The admission note was written on 1/28/04 by Dr. Ferguson, and makes specific mention of the patient's psychiatric history, brief observation of mental state, and intention to manage psychiatric illness during the hospitalization. Also on 1/28/04, Dr. Ennix and Dr. Brun examined the patient and dictated an admission note. In this note, it is similarly observed that the patient suffered from schizophrenia. It further mentions, in the last section entitled "Assessment" that Dr. Ennix had discussed the planned surgical procedure with the patient and his representative from the board and care facility where the patient resided. Specifically, it is noted "Coyness L. Ennix, Jr., M.D. was present and discussed the risks and benefits and alternatives, and all questions were answered. The patient agrees to proceed."

As the medical records indicate, the patient underwent an aortic valve replacement on 1/28/04 but suffered multiple post-operative complications necessitating a second surgery on 1/31/04 to replace the first valve. A progress note in the chart dated 1/31/04 authored by Dr. Ferguson indicates that the patient was informed of the need for the second surgery, and that Dr. Ferguson discussed this with him and that he agreed. Although Dr. Ennix did not sign this note, nor generate his own at this time, the patient subsequently confirmed that he was present and explained the second procedure to him with Dr. Ferguson. This confirmation can be found in the February 18, 2005 letter from the patient to the Medical Staff President of Summit Medical Center. The patient states quite clearly: "Sometime after the operation Dr. Ferguson, the cardiologist, and Dr. Ennix told me that the new valve needed to be replaced because it wasn't working well. I was afraid but Dr. Ennix explained it to me in detail and I understood that there were some risks. I understood that I needed the second operation and I agreed to it. I also understood that the first operation might need to be longer because of the smaller incision."

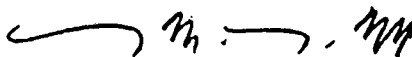
Issue of Schizophrenia and Ability to Understand:

The records reflect that the patient had suffered from Schizophrenia since the age of sixteen years. He had been hospitalized many times, and had been living in a board and care facility for many years. He was managed on a variety of psychiatric medications and was on disability. He was familiar to Dr. Ferguson since February 2001 when the patient was first referred for a cardiology consultation. He appears to have suffered with worsening cardiac disease for several years. The records reflect that Dr. Ferguson subsequently cared for him in his 2003 hospitalization for cardiac catheterization. This familiarity is an important factor in the determination of the patient's ability to understand informed consent, and tolerate stressful surgeries such as this patient required. There is no mention in the medical records of any psychological instability or acute psychotic symptoms, quite to the contrary he presents as someone with schizophrenia well controlled by medication. The additional fact of his having been accompanied by a caregiver from his residence who knew him and his needs and limitations, supports the opinion that the patient was capable of understanding what was being told to him. Except in situations of acute decompensation, where a patient is psychotic and unable to fully comprehend reality, patients with schizophrenia are capable of making informed decisions, asking relevant questions, and stating their objections. In this patient's case, his letter to Summit Medical Center explicitly states that he was capable of understanding Dr. Ennix.

Clinical Impression:

It is my opinion that this patient adequately understood the information that Drs. Ferguson and Ennix gave him about his need for surgery, both the first and second times. It is further my opinion that his schizophrenia was being well controlled on medication, and that he did not suffer any adverse psychiatric effects from the experience of the surgeries. The bout of agitation and psychic decompensation that he experienced in the postoperative period was most likely due to the fact that he was not being given his usual dose of psychiatric medication (see admitting doses of depakote and seroquel and compare to doses administered from 1/28 until psychiatric consult on 2/2/04). As his medication dosages were restored and his medical condition improved, he appeared to return to his former level of functioning. While cognitive deficits can certainly be present in schizophrenia, there is no evidence that this patient's psychiatric disease was in an active state at the time of his surgery and rendering of consent. He had been able to consent to the cardiac catheterization and subsequently to understand (by his own testimony) the explanations of Drs. Ennix and Ferguson regarding the need for surgery, its risks and potential complications.

Respectfully submitted,



Margo M. Leahy, M.D.

Margo M. Leahy, M.D.

1902 WEBSTER STREET
SAN FRANCISCO, CA. 94115

TEL (415) 929-7789 FAX (415) 566-1278

January 2008

Cases in which I have testified at deposition and/or trial during the last four years:

Curran v. Hyatt Regency Hotel - Deposition
Gomez v. City of Salinas – Deposition
Tim Hilton v. United States of America – Deposition
Brinker v. Blue Cross – Arbitration, San Francisco
Merchant v. Flint et al. – Deposition
Passeri v. Pacific Life Insurance et al. – Both, San Francisco Superior Ct.
Robin Scott King v. Stanford - Both, Santa Clara County Superior Ct.
Hardin v. Hardin – Both, Monterey
Cheresnik, Harmon et al. City and County of San Francisco – Both, San Mateo
County Superior Court
Lee v. Mary Dunleavy – Both, Marin County Superior Court
Dorothy Waldeck, et al. v. National General Insurance – Arbitration, San Mateo
Dianna Roan, et al. v. AIMCO, et al – Deposition
Hernandez v. Hispanic Broadcasting Co. et al. – Both, JAMS
Helm v. Hernandez – Deposition
Angela Sze v. Permanente Medical Group – Both, San Francisco Superior Ct.
Franco v. Boston Scientific - Deposition

CURRICULUM VITA

Margo M. Leahy, M.D.

1902 Webster Street
San Francisco, CA. 94115

Tel: 415-929-7789

Fax: 415-566-1278

Email:

Child, Adolescent & Adult Psychiatry
Forensic Psychiatry
Jungian Psychoanalysis

Licensure: State of California, 1974.
G-28374

Certification: American Board of Psychiatry & Neurology, 1983.

Education:

University of Maryland
College Park, Md.

B.S. Zoology 1964-68
Postgraduate research,
N.S. F. grant 1968-69

University of Maryland
Baltimore, Md.

M.D. with honors in
medicine, pediatrics,
and psychiatry.
1969-73

Postgraduate Training:

Washington Hospital Center
Washington, D.C.

Internship, medicine
1973-74

Stanford University
Stanford, Calif.

Residency, psychiatry
1974-76
Fellowship, child
psychiatry 1976-78

C.G. Jung Institute
San Francisco, Calif.

Psychoanalytic training
1978-87

Society for Analytical Psychology
Tavistock Centre
London, England

Child analytic training
1978-83

Academic Appointments:

Director, Child Psychiatry Outpatient Clinic
Children's Hospital @ Stanford
Department of Psychiatry and the Behavioral Sciences
Stanford, Calif.

1978-81

Instructor, Training and Extended Education Program
C.G. Jung Institute
San Francisco, Calif.

1981-present

Assistant Clinical Professor, Psychiatry
Department of Psychiatry and the Behavioral
Sciences
Stanford University
Stanford, Calif.

1981-91

Guest Lecturer, Department of Psychology
Stanford University
Stanford, Calif.

1981-85

Instructor, Pacific Graduate School of
Psychology
Menlo Park, Calif.

1982-present

Assistant Clinical Professor, Psychiatry
Associate Clinical Professor, Psychiatry
Langley Porter Institute, University of California
San Francisco, Calif.

1988-2001
2001-present

Other Appointments:

Consultant, Palo Alto Unified School District Palo Alto, Calif.	1979-81
Consultant, Peninsula Children's Center Palo Alto, Calif.	1981-87
Consultant, Committee of Bar Examiners State Bar of California Los Angeles, Calif.	1997-present
Professional Advisory Board Gateway High School San Francisco, Calif.	1998-present
Consultant, Town School for Boys San Francisco, Calif.	1999-present
Medical Board of California Division of Medical Quality	2000-2002
Kid's Turn, Board of Directors San Francisco, Calif.	2001-2004
Ethics Task Force of the Medical Board Of California	2003- present
The Hamlin School, Board of Trustees San Francisco, Calif.	2005- present
C.G. Jung Institute, Treasurer San Francisco, Calif.	2005-present

Professional Societies and Organizations:

C.G. Jung Institute, Member Analyst
 Regional Organization of Child and Adolescent Psychiatry
 Northern California Psychiatric Society
 American Psychiatric Association
 International Association of Analytical Psychologists
 American Academy of Psychiatry and the Law

Teaching Experience:

1978-88 Introduction to Child Psychiatry
 Play Therapy with Children
 D.W. Winnicott and Child Psychiatry
 Interviewing Techniques with Children & Families
 Individual Case Conference
 Diagnosis and Treatment of Children with Learning
 Disabilities

Stanford University, Dept. of Psychiatry

1980-85 Introduction to Jungian Psychology

Stanford University
Department of Psychology

1981-present Object Relations Theory and Jungian Analysis
 Object Relations Theory, Kohutian, and
 Jungian Psychology
 Introduction to British Object Relations
 Jungian Work with Children & Adolescents
 Symbol Formation in Adolescence
 Introduction to Jungian Child Therapy
 Infant Development and the Capacity for
 Symbolic Thinking
 The Role of the Skin in the Development
 of Symbol Formation

C.G. Jung Institute
San Francisco, Calif.

1981-87 Psychodynamics of Children with Learning
 Disabilities and their Families.
 Play Therapy with Children
 Transference & Countertransference in Child Psychiatry
 Psychotherapy with Psychotic & Autistic Children
 and Adolescents

Peninsula Children's Center
Palo Alto, Calif.

Lectures Given:

May 1989 Child Sexual Abuse: Origins, Dynamics and
Treatment

Annual Meeting of the American
Academy of Psychoanalysis
San Francisco, Calif.

July 1991 Play Therapy: A Jungian-Winnicottian Perspective

Bruno Klopfer Workshop
C.G. Jung Institute of
Los Angeles

April 1996 The Work of Michael Fordham: An Historical
and Theoretical View

Fordham Memorial Conference
C.G. Jung Institute of
San Francisco

April 1997 The Capacity for Symbolization in Children and
Adults with Histories of Early Trauma

United Nations "Year of the Child"
National Association for the
Advancement of Psychoanalysis
New York

April 1999 Parenting: A Developmental Stage in Adulthood

Town School for Boys
San Francisco, Calif.

April 1999 The Difficulty with Affective Disorder Diagnosis
In Adolescence

Grand Rounds
Department of Psychiatry
Langley Porter Institute
University of California
San Francisco, Calif.

**August 1999 The Emotional Development of Boys in Same
Sex Independent Schools**

**Town School for Boys
San Francisco, Calif.**

April 2000 Medications in Psychoanalysis: the Analytic Perspective

**Northern California Psychiatric
Society Annual Meeting
Monterey, Calif.**

June 2000 Childhood Bullying

**Seventh Annual International
Boys School Conference
San Francisco, Calif.**

October 2000 The Emotional Health of Boys

**Fairfield Country Day School
Fairfield, Connecticut**

April 2002 Psychological Illness in Adolescence

**Lick Wilmerding High School
San Francisco, Calif.**

**August 2002 Psychological Issues in the
Education of Girls**

**The Hamlin School
San Francisco, Calif.**

**May 2003 How to Most Effectively Employ a
Psychiatric Expert Witness in Civil
Cases**

**Sedgwick, Detert, Moran &
Arnold LLP
San Francisco, Calif.**

November 2003 The Developmental and Emotional
Needs of Elementary School
Children

Bay Area Assistant Teachers
Coordinators Conference
San Francisco Day School
San Francisco, Calif.

April 2004 Parenting Your Pre-Adolescent
Daughter

The Hamlin School
San Francisco, Calif.

January 2005 Mother-Daughter Relationships

Marin Country Day School
Mill Valley, Calif.

Publications:

Leahy, Margo. "Child Sexual Abuse: Origins, Dynamics, and Treatment", The Journal of The American Academy of Psychoanalysis, Vol. 19, Number 3, Fall 1991, pp. 385-395.

Leahy, Margo. Review of Jungian Child Psychotherapy: Individuation in Childhood and The Unfolding Self: Separation and Individuation, in The San Francisco Jung Institute Library Journal. Vol. II, Number 1, 1992, .pp. 31-34

Leahy, Margo. Review of The Exploding Self: The Creative and Destructive Nucleus of the Personality, in The Journal of Analytical Psychology. Vol. 40, Number 3, 1995, pp. 478-479.

Forensic Experience:

- 1974-76 Court testimony for conservatorship hearings in Santa Clara County, Stanford University Department of Psychiatry.
- 1976-78 Forensic consultant for child custody evaluations, Division of Child Psychiatry, Stanford University Department of Psychiatry.
- 1980- present Forensic consultation in civil litigation involving the following: personal injury due to sexual harassment, wrongful termination, employment discrimination, product or premise liability, medical malpractice, and miscellaneous other civil matters.
- 1997- present Evaluation of petitions for special accommodations to take the State Bar of California admission examination.

Margo M. Leahy, M.D.

1902 WEBSTER STREET
SAN FRANCISCO, CA. 94115

TEL (415) 929-7789 FAX (415) 566-1278

Psychiatric Consultation Fee Schedule:

**Interviews, presentations, consultation, record review
and conferences**

\$ 400./hr.

Deposition testimony

\$ 450./hr.

Court testimony or professional workshop

\$ 2000./half-day

\$ 3500./full day

EXHIBIT 2

LAW OFFICES OF
MOSCONE, EMBLIDGE & QUADRA, LLP

MILLS TOWER
220 MONTGOMERY STREET, SUITE 2100
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE: (415) 362-3599 FAX: (415) 362-2006

February 27, 2008

Via Hand Delivery

Mathew Vandall, Esq.
Kauff, McClain & McGuire LLP
One Post Street, Suite 2600
San Francisco, California 94104

Re: *Ennix v. Alta Bates Summit Medical Center*

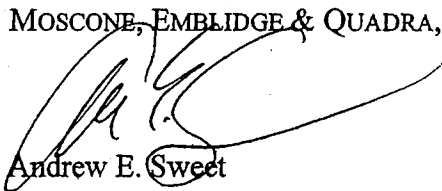
Dear Matt:

Enclosed are documents in response to subpoenas issued to Dr. Leahy and Mr. Greene.

Documents responsive to Dr. Leahy's subpoena are Bates numbered L0001-L0657. Documents responsive to Mr. Greene's subpoena are Bates numbered G0001-G1391.

Sincerely,

MOSCONE, EMBLIDGE & QUADRA, LLP


Andrew E. Sweet

enclosure



EXHIBIT 3

REDACTED

MR# 1205056

February 18, 2005

Medical Staff President
Summit Campus
Alta Bates Summit Medical Center
350 Hawthorn Avenue
Oakland, CA 94609

Dear Sir:

I am writing to express my feelings and thoughts regarding Dr. Coyness Ennix. I believe Dr. Ennix to be a good and caring doctor. In January or February of 2004, Dr. Ennix operated on me to replace an aortic valve. I am now doing well and I am going on with my life, no longer worried about my heart valve.

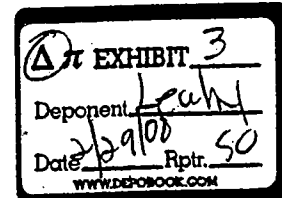
I first met with Dr. Ennix in his office where he explained to me why my valve needed replacing. He drew pictures and he showed me a model heart so that I would understand. In addition, I also understood that he would try to do the operation through a small incision. I understood this and I agreed. I knew that the operation carried some risks including death and bleeding. That's why I was at first nervous and afraid. But because of Dr. Ennix and his explanations, I felt better about it.

Sometime after the operation Dr. Ferguson, the cardiologist, and Dr. Ennix told me that the new valve needed to be replaced because it wasn't working well. I was afraid but Dr. Ennix explained it to me in detail and I understood that there were some risks. I understood that I needed the second operation and I agreed to it. I also understood that the first operation might need to be longer because of the smaller incision.

I believe Dr. Ennix to be a good and kind doctor and he explained everything to me so that I understood. I now feel well, I have seen Dr. Ennix and I am happy with his work. If you would like to discuss this with me, you can call me at my home at :

Thank you.

Sincerely yours,



L0017

EXHIBIT B

1 UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA

3 COYNESS L. ENNIX, JR., M.D., as)
4 an individual and in his)
5 representative capacity under)
6 Business and Professions Code)
7 Section 17200, et seq.,)

8 Plaintiff,
9 vs.)

Case No: 07-2486

10 RUSSELL D. STANTEN., M.D., LEIGH)
11 I.G. IVERSON, M.D., STEVEN A.)
12 STANTEN, M.D., WILLIAM M.)
13 ISENBERG, M.D., Ph.D., ALTA BATES)
14 SUMMIT MEDICAL CENTER, DOES 1)
15 through 100, inclusive,)

16 Defendants.)

17 **TRANSCRIPT MARKED CONFIDENTIAL**

18 DEPOSITION OF COYNESS L. ENNIX, JR., M.D.

19 VOLUME II, pages 130 to 354

20 Saturday, May 26, 2007

21 10:11 a.m.

22 Taken at Kauff, McClain & McGuire
23 One Post Street
24 San Francisco, California

25 PREFERRED REPORTERS
Certified Shorthand Reporters
201 E. Watmaugh Road
Sonoma, California 95476
707-938-9227

Reported By: Linda Vaccarezza, RPR, CSR #10201

1 lost their relatives recently and said, would you 02:19:35p
2 give me a letter supporting me? 02:19:38p
3 A It wasn't like that. I'm very close to 02:19:40p
4 my patients, and I'm very close to my families. 02:19:44p
5 I wouldn't just show up at their home, if that's 02:19:47p
6 what you're suggesting. 02:19:50p
7 I frequently have conferences with 02:19:51p
8 patients after -- I'm sorry, with family after a 02:19:54p
9 loved one has died. And invariably I have good 02:19:56p
10 rapport with my patients and their families. So 02:20:00p
11 it didn't surprise me one bit that the patients 02:20:04p
12 or their families were willing to verify that I 02:20:07p
13 went over the case and went over the risk with 02:20:10p
14 them. 02:20:17p
15 MS. MCCLAIN: May I have this marked as next 02:20:18p
16 in order, please? 02:20:19p
17 (Exhibit 24 was marked for identification.) 02:20:31p
18 MR. EMBLIDGE: Do you want him to read -- 02:20:56p
19 BY MS. MCCLAIN: 02:20:57p
20 Q Did you write this letter to 02:20:57p
21 Dr. Smithline? 02:20:58p
22 A It's my address and that's my name. 02:20:59p
23 Q Is that your signature? 02:21:02p
24 A And that's my signature. 02:21:03p
25 Q Did you write this letter to 02:21:05p

1 Dr. Smithline on March 5, 2005? 02:21:06p

2 A Sitting here, I don't -- it looks like 02:21:09p

3 March the 3rd 2005. 02:21:12p

4 Q Thank you. 02:21:13p

5 A I presume that that's correct. 02:21:13p

6 Q In the second paragraph of the letter 02:21:15p

7 you say, "After discussions with each family or 02:21:21p

8 the patient, I prepared a letter for their 02:21:23p

9 signature. They all reviewed the letter and 02:21:26p

10 affixed their signatures." 02:21:30p

11 A Okay. 02:21:33p

12 Q Is it correct that you wrote all the 02:21:34p

13 letters from patients? 02:21:37p

14 A That is a possibility. That's -- if I 02:21:38p

15 said that here, then that must have been the 02:21:42p

16 case. But I did it with the full cooperation 02:21:44p

17 with the patients and had discussed it with the 02:21:50p

18 patients at exactly -- with regard to exactly 02:21:52p

19 what they felt about my discussing the risk with 02:21:56p

20 them. 02:22:02p

21 Q Did every patient or family member sign 02:22:02p

22 such a letter? 02:22:06p

23 A I think so. I certainly -- I -- I don't 02:22:07p

24 quite recall, but I think certainly most of them 02:22:16p

25 did. I was never actually turned down. There 02:22:19p

1 MAUREEN E. MCCLAIN (State Bar No. 062050)
Email: mcclain@kmm.com

2 ALEX HERNAEZ (State Bar No. 201441)
Email: hernaez@kmm.com

3 KAUFF MCCLAIN & MCGUIRE LLP
One Post Street, Suite 2600
4 San Francisco, California 94104
Telephone: (415) 421-3111
5 Facsimile: (415) 421-0938

6 Attorneys for Defendant
ALTA BATES SUMMIT MEDICAL CENTER

7 TAZAMISHA H. IMARA (State Bar No. 201266)
Email: imara@kmm.com

8 KAUFF MCCLAIN & MCGUIRE LLP
9 2049 Century Park East
Suite 2690
10 Los Angeles, CA 90067
Telephone: (310) 277-7550
11 Facsimile: (310) 277-7525

12 Attorneys for Defendant
ALTA BATES SUMMIT MEDICAL CENTER

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 COYNESS L. ENNIX, JR., M.D.,

18 Plaintiff,

19 v.

20 ALTA BATES SUMMIT MEDICAL CENTER,

21 Defendant.
22
23
24
25
26
27
28

CASE NO. C 07-2486 WHA

**DECLARATION OF ROSSANA S.
ELTANAL IN SUPPORT OF
MOTION IN LIMINE NO. 7**

DATE: May 19, 2008
TIME: 2:00 p.m.
DEPT: Ctrm. 9, 19th Floor
JUDGE: Hon. William H. Alsup

COMPLAINT FILED: May 9, 2007
TRIAL DATE: June 2, 2008

1 I, Rossana S. Eltanal, declare as follows:

2 1. I am an attorney at law licensed to practice before the Courts of the
3 State of California and before this Court. I am an associate with Kauff McClain &
4 McGuire LLP, attorneys of record for Defendant Alta Bates Summit Medical Center. I
5 make this declaration for the purpose of Defendant's Motion in Limine No. 7. I have
6 personal knowledge of the facts set forth herein. If called as a witness, I could and
7 would testify competently as to the facts set forth herein.

8 2. I took the deposition of Margo M. Leahy, M.D. on February 29,
9 2008. Attached as **Exhibit A** to Defendant's Motion in Limine No. 7 is true and correct
10 copy of the deposition transcript of Margo M. Leahy, M.D.

11 3. The deposition of Coyness L. Ennix, Jr., M.D. took place at the
12 offices of Kauff McClain & McGuire on May 26, 2007. Attached as **Exhibit B** to
13 Defendant's Motion in Limine No. 7 is a true and correct copy of the relevant portions of
14 the deposition transcript of Coyness L. Ennix, Jr., M.D. (Volume II).

15 I declare under penalty of perjury under the laws of the United States that
16 the foregoing is true and correct.

17 Executed this 29th day of April 2008, at San Francisco, California.

18 
19 ROSSANA S. ELTANAL

20
21
22
23 4819-8742-9890.1
24
25
26
27
28

REC'D MAY 09 2008

G. SCOTT EMBLIDGE, State Bar No. 121613
emblidge@meqlaw.com
RACHEL J. SATER, State Bar No. 147976
sater@meqlaw.com
ANDREW E. SWEET, State Bar No. 160870
sweet@meqlaw.com
MOSCONE, EMBLIDGE, & QUADRA, LLP
220 Montgomery Street, Suite 2100
San Francisco, California 94104-4238
Telephone: (415) 362-3599
Facsimile: (415) 362-2006

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX JR., M.D.,

Plaintiff,

vs.

ALTA BATES SUMMIT MEDICAL
CENTER,

Defendants.

Case No. C 07-2486 WHA

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION IN
LIMINE NO. 7 TO EXCLUDE
EVIDENCE CONCERNING THE
REPORT AND ANTICIPATED
TESTIMONY OF MARGO LEAHY,
M.D.**

**Trial Date: June 2, 2008
Dept: Ctrm. 9, 19th Floor
Judge: Hon. William H. Alsup**

INTRODUCTION

In many instances during Dr. Ennix's peer review, ABSMC manufactured facts to destroy Dr. Ennix's career by using faulty and inaccurate evidence against Dr. Ennix. One example is ABSMC's insistence that a schizophrenic patient was unable to give informed consent before surgery, notwithstanding evidence that the patient actually gave informed consent.

1 To highlight the issue for the jury and establish that ABSMC's claims in this regard were
2 in bad faith and indicative of discrimination, Dr. Ennix hired an expert psychiatrist to review the
3 same records ABSMC reviewed and opine whether the schizophrenic patient was capable of
4 giving informed consent. The expert opined that the patient was capable of giving informed
5 consent.

6 ABSMC moves to exclude this expert evidence on the ground that the opinion is not
7 based on sufficient facts, as irrelevant and unduly prejudicial. In other words, ABSMC argues
8 that an expert psychiatrist should be precluded from presenting her expert opinion, but ABSMC
9 should be able to stand by its inaccurate, non-expert, statements and conclusions to the contrary.
10 ABSMC also seeks to preclude the expert from testifying to statements made known to her
11 through medical records.

12 The claims are all meritless.

13 STATEMENT OF FACTS

14 The patient at issue was admitted to the Summit Medical Center on January 28, 2004.
15 His care was provided by Dr. Rollington Ferguson as his admitting physician and Dr. Ennix as
16 his cardiothoracic surgeon. The admission notes reflect that the patient suffered from
17 schizophrenia. The admission notes also state, "Coyness L. Ennix, Jr. M.D. was present and
18 discussed the risks and benefits and alternatives, and all questions were answered. The patient
19 agrees to proceed." Sweet Decl. ¶2.

20 Dr. Ennix performed surgery that same day. The patient had a second surgery on January
21 31, 2004. A progress note of the same date written by Dr. Ferguson indicated the patient was
22 informed of the need for a second surgery, and that Dr. Ferguson discussed it with him and that
23 he agreed. Dr. Ennix was present for this meeting and explained the procedure to the patient.
24 The patient later signed a letter confirming that he gave informed consent to both surgeries.
25 Sweet Decl. ¶3.

26 Throughout Dr. Ennix's peer review, ABSMC repeatedly criticized Dr. Ennix regarding
27 this patient. Sweet Decl. ¶4. Notwithstanding the evidence that actual informed consent was
28

1 given, and without bothering to even interview Dr. Ferguson, ABSMC concluded in the AHC
 2 report that this patient was “likely incapable of understanding the issues associated with” the
 3 procedure. Sweet Decl. ¶5.

4 Dr. Ennix and Dr. Ferguson were present and observed that the patient was capable of
 5 providing informed consent. Sweet Decl. ¶6.

6 Dr. Ennix retained an expert psychiatrist, Margo Leahy, M.D., to review the same
 7 evidence reviewed by ABSMC. The evidence included medical records, physician
 8 correspondence, ABSMC meeting minutes and correspondence between patient and doctor.
 9 Sweet Decl. ¶7. Dr. Leahy reviewed the evidence and concluded that this patient was capable of
 10 providing informed consent and did provide informed consent. Sweet Decl. ¶8.

11 ARGUMENT

12 I. DR. LEAHY’S EXPERT TESTIMONY IS PROPER AND ADMISSIBLE

13 ABSMC claims that Dr. Leahy’s expert opinion is unreliable since it is not based upon
 14 sufficient facts or data. Fed. Rule of Evid. 702(1). The claim is essentially that Dr. Leahy only
 15 looked at records and failed to interview Dr. Ennix, the patient or the patient’s health care
 16 providers and therefore she cannot opine as to the patient’s ability to consent or whether he gave
 17 consent.

18 However, ABSMC failed to acknowledge that the seminal case regarding expert opinion
 19 explicitly holds that experts are permitted wide latitude to offer opinions, including those that are
 20 not based on firsthand knowledge or observations, so long as they have a reliable basis in the
 21 knowledge and experience of the discipline. *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509
 22 U.S. 579, 592.

23 Further, any issue regarding the source of Dr. Leahy’s data goes only to the weight of her
 24 testimony, not to admissibility, since it is the expert’s reasoning or methodology, not the source
 25 of her data, that qualifies her as an expert. The jury will receive an instruction from the Court
 26 that the jury may give Dr. Leahy’s testimony as much weight as the jury thinks it deserves. See
 27 Ninth Circuit Model Civil Jury Instruction 2.11.
 28

1 ABSMC's argument is transparently ironic. ABSMC argues that an expert psychiatrist
 2 should be precluded from presenting an expert opinion regarding whether or not a psychiatric
 3 patient was capable of, and did, provide informed consent, while ABSMC presents their faulty,
 4 inaccurate and uninformed conclusions to the contrary. ABSMC ruined the reputation of a well-
 5 regarded cardiac surgeon and a leader in the community by relying on the same information it
 6 now claims is too speculative for an expert to rely upon. Of note, the medical records contained
 7 information regarding the types of medications the patient was on, offering Dr. Leahy insight
 8 into his level of stability.

9 If the evidence was sufficient for ABSMC to use in the peer review, it is certainly
 10 sufficient for Dr. Leahy to use here.

11 **II. DR. LEAHY'S EXPERT TESTIMONY IS RELEVANT**

12 "All relevant evidence is admissible, except as otherwise provided [by law]. Evidence
 13 which is not relevant is not admissible." Fed. Rule Evid. 402.

14 ABSMC argues that evidence regarding the informed consent of a single patient is too
 15 insignificant to qualify as relevant. Not true. In this case, Dr. Ennix has to cobble together
 16 discreet pieces of circumstantial evidence to prove discrimination. Dr. Leahy's testimony will
 17 help establish that ABSMC cavalierly and without good cause drew unfair and inaccurate
 18 conclusions against Dr. Ennix. ABSMC claims they treated Dr. Ennix fairly. Dr. Ennix can
 19 prove, in part through the testimony of Dr. Leahy, that he was not treated fairly in that ABSMC
 20 used bogus conclusions to manufacture a case against him.

21 ABSMC also claims that Dr. Leahy's expert opinion will cause it undue prejudice if the
 22 jury hears that she thinks the patient was capable of giving, and gave, informed consent. The
 23 argument is a reiteration of ABSMC's relevance objection and fails to explain why Rule 403
 24 should preclude this evidence if it is found to be relevant other than to claim the opinion will
 25 "contribute nothing but intrude upon the area reserved for the jury." Def. Motion in Limine No.
 26 7 5:8-9. The statement is unclear, but suggests that ABSMC believes that the jury's role in this
 27 case is only to hear only ABSMC's side of this case, an argument unworthy of a response.
 28

1 **III. LIKE ANY OTHER EXPERT, DR. LEAHY MAY RELY ON HEARSAY IN THE**
 2 **RECORDS SHE REVIEWED TO SUPPORT HER EXPERT OPINION**

3 Lastly, ABSMC argues that Dr. Leahy should be prohibited from acting simply as a
 4 conduit through which hearsay is brought before the jury and that somehow the hearsay will be
 5 admitted through her testimony to establish the truth of the matter.

6 But, ABSMC makes no showing at all why this expert witness is different than every
 7 other expert witness who testifies daily in our Courts under very familiar guidelines. As long as
 8 hearsay information is the type reasonably relied upon by experts in the field that information
 9 may used to form expert opinions. Fed. Rule of Evid. 703. Concurrently, the court can instruct
 10 the jury that any hearsay evidence is admitted only as the basis for the expert opinion and not for
 11 the truth of the matter. Ninth Circuit Model Civil Jury Instructions 1.8.

12 Clearly medical records and the other materials reviewed by Dr. Leahy, were the type
 13 regularly relied upon by experts in her field. She should be able to explain the basis for her
 14 opinion, with the proper limiting instruction.

15 At this point, Dr. Ennix is not advocating that the hearsay evidence itself be admitted into
 16 evidence pursuant to Fed. Rule of Evid. 703. However, to the extent ABSMC is advocating here
 17 that the records should be excluded, that issue should be addresses if and when raised at trial.

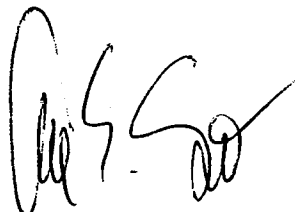
18 **CONCLUSION**

19 For the above-stated reasons, the motion should be denied.

20 DATED: May 9, 2008

21 Respectfully submitted,

22 MOSCONE, EMBLIDGE & QUADRA, LLP

23 
 24 By: _____
 25 Andrew E. Sweet

26 Attorneys for Plaintiff

REC'D MAY 09 2008

G. SCOTT EMBLIDGE, State Bar No. 121613
emblidge@meqlaw.com
RACHEL J. SATER, State Bar No. 147976
sater@meqlaw.com
ANDREW E. SWEET, State Bar No. 160870
sweet@meqlaw.com
MOSCONE, EMBLIDGE, & QUADRA, LLP
220 Montgomery Street, Suite 2100
San Francisco, California 94104-4238
Telephone: (415) 362-3599
Facsimile: (415) 362-2006

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX JR., M.D

Plaintiff,

vs.

ALTA BATES SUMMIT MEDICAL
CENTER

Defendant.

Case No.: C 07-2486 WHA

**DECLARATION OF ANDREW E.
SWEET IN OPPOSITION TO
DEFENDANT'S MOTION IN LIMINE
NO. 7**

**Date: April 24, 2008
Time: 8:00 a.m.
Dept.: Ctrm. 9, 19th Floor
Judge: Hon. William H. Alsup**

**Complaint Filed: May 9, 2007
Trial Date: June 2, 2008**

I, Andrew E. Sweet declare:

1. I am an attorney licensed to practice in California, admitted to this Court, and an attorney at Moscone, Emblidge & Quadra LLP, attorneys of record for Plaintiff Coyness L. Ennix, Jr. M.D. I have personal knowledge of the facts stated in this declaration.

2. The patient at issue was admitted to the Summit Medical Center on January 28, 2004. His care was provided by Dr. Rollington Ferguson as his admitting physician and Dr. Ennix as his cardiothoracic surgeon. The admission notes reflect that the patient suffered from

1 schizophrenia. The admission notes also state, "Coyness L. Ennix, Jr. M.D. was present and
2 discussed the risks and benefits and alternatives, and all questions were answered. The patient
3 agrees to proceed."

4 3. Dr. Ennix performed surgery that same day. The patient had a second surgery on
5 January 31, 2004. A progress note of the same date written by Dr. Ferguson indicated the patient
6 was informed of the need for a second surgery, and that Dr. Ferguson discussed it with him and
7 that he agreed. Dr. Ennix was present for this meeting and explained the procedure to the
8 patient. The patient later signed a letter confirming that he gave informed consent to both
9 surgeries.

10 4. Throughout Dr. Ennix's peer review, ABSMC repeatedly criticized Dr. Ennix
11 regarding this patient.

12 5. Notwithstanding the evidence that actual informed consent was given, and
13 without bothering to even interview Dr. Ferguson, ABSMC concluded in the AHC report that
14 this patient was "likely incapable of understanding the issues associated with" the procedure.

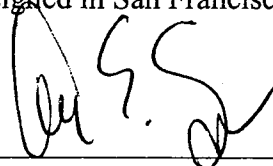
15 6. Dr. Ennix and Dr. Ferguson were present and observed that the patient was
16 capable of providing informed consent.

17 7. Dr. Ennix retained an expert psychiatrist, Margo Leahy, M.D., to review the same
18 evidence reviewed by ABSMC. The evidence included medical records, physician
19 correspondence, ABSMC meeting minutes and correspondence between patient and doctor.

20 8. Dr. Leahy reviewed the evidence and concluded that this patient was capable of
21 providing informed consent and did provide informed consent.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct and that this declaration was signed in San Francisco, California.

3
4 Dated: May 9, 2008



Andrew E. Sweet